F. & D. No. 2157.
S. No. 776.

Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1001.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO PASTE.

On December 8, 1910, the United States Attorney for the Eastern District of Pennsylvania, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 35 boxes of tomato paste in the possession of H. Polinsky.

Examination of the two samples from said consignment by the Bureau of Chemistry of the United States Department of Agriculture showed them to contain, respectively, yeasts and spores 600 per one-sixtieth cmm., and 250,000,000 bacteria per cc., and mold filaments in 55 per cent of fields; yeasts and spores 500 per one-sixtieth cmm., and 250,000,000 bacteria per cc., and mold filaments in 55 per cent of fields. The libel alleged that the tomato paste, after transportation from New York into Pennsylvania, remained in the original unbroken packages, and was adulterated in violation of the Food and Drugs Act of June 30, 1906, because it consisted in whole or in part of a filthy, putrid, or decomposed vegetable substance, and was therefore liable to seizure for confiscation.

On December 22, 1910, H. Polinsky filed answer to said libel, a jury was waived, and the case was heard by the court. On March 14, 1911, the court found the said product to consist in part of a decomposed vegetable substance, and that the United States was entitled to a decree of condemnation as prayed for in the libel. Accordingly a decree was entered on March 31, 1911, condemning and forfeiting the goods to the United States and ordering their destruction by the marshal.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 29, 1911.*

O

F. & D. No. 2372.
I. S. No. 2273–c.

Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1002.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF CHEESE.

On April 5, 1911, the United States Attorney for the Eastern District of Wisconsin, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the Algoma Produce Co., Algoma, Wis., alleging shipment by that company, in violation of the Food and Drugs Act, on or about November 10, 1910, from the State of Wisconsin into the State of Missouri, of a certain quantity of cheese, a food product, which was misbranded. The label on this product bore the statement that the box or package contained 45 pounds of cheese.

Examination of the product by the Bureau of Chemistry showed it to contain only 43 pounds of cheese. Misbranding was alleged for the reason that there was, therefore, a shortage in weight, and the statement of the label was false and misleading.

On April 12, 1911, the defendant pleaded guilty and was fined $25, which was paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 29, 1911.*

1964°—No. 1002—11

F. & D. No. 2262.
I. S. No. 625–c. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1003.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF TOMATO CATSUP.

On April 11, 1911, the United States Attorney for the Southern District of Iowa, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the Burlington Vinegar & Pickle Co., Burlington, Iowa, alleging shipment by that company, in violation of the Food and Drugs Act, on or about December 3, 1909, from the State of Iowa into the State of Nebraska, of a quantity of tomato catsup, a food, which was adulterated and misbranded. The product was labeled: (Main label) "Tomato Catsup, Burlington Vinegar & Pickle Works, Burlington, Iowa." (Neck label) "Does not contain any artificial coloring matter." (On sticker) "The catsup contained in this bottle is manufactured from whole ripe tomatoes, granulated sugar, salt, pure spices, and distilled vinegar. Contains 1/10 of 1% benzoate of soda. Net contents 13 oz."

Analysis by the Bureau of Chemistry showed that the product contained yeasts and spores to the extent of 900 per one-sixtieth cmm., with bacteria at the rate of about 20,000,000 per cc., and abundant molds. Adulteration was alleged for the reason that these substances were present in the product, and that it therefore consisted in whole or in part of a filthy, decomposed, and putrid animal or vegetable substance. Misbranding was alleged for the reason that the statements on the label above indicated did not conform to the composition of the product, and that such label was therefore false and misleading.

The defendant company pleaded guilty and was fined $50 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 30, 1911.*

1964°--No. 1003—11

F. & D. Nos. 1731 and 2177.
I. S. Nos. 15252–b and 915–c. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1004.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF TOMATO CATSUP.

On October 18, 1910, the United States Attorney for the Southern District of Iowa, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the Anderson Canning Co., Keokuk, Iowa, alleging shipment by that company, in violation of the Food and Drugs Act, on or about November 5, 1909, from the State of Iowa into the State of Missouri, of a quantity of tomato catsup, a food product, which was adulterated and misbranded.

Analysis by the Bureau of Chemistry showed that the product contained yeasts and spores to the extent of 77 per one-sixtieth cmm., with numerous bacteria estimated at 108,000,000 per cc., and abundant molds. The label contained the statement: "Preserved with 1/10 of 1 per cent benzoate of soda." Adulteration was alleged for the reason that there were present in the product yeasts, spores, bacteria, and abundant molds, and that it was, therefore, composed in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance. Misbranding was alleged in that the label contained the statement that the product contained one-tenth of 1 per cent of benzoate of soda, whereas the analysis showed the product to contain more than this amount, and the label was, therefore, false and misleading.

The defendant pleaded guilty and was fined $200 and costs. On June 7, 1911, the court reduced said fine to $40.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 30, 1911.*

1964°—No. 1004—11

F. & D. No. 2184.
S. No. 796. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1005.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF DESICCATED EGGS.

On December 21, 1910, the United States Attorney for the District of Minnesota, acting upon the report by the Secretary of Agriculture, filed a libel for seizure and condemnation in the District Court of the United States against two barrels of desiccated eggs in possession of the Loose-Wiles Biscuit Co., Minneapolis, Minn., alleging that the product had been transported, on or about December 9, 1910, from the State of Illinois into the State of Minnesota, and charging adulteration in violation of the Food and Drugs Act. The labels on top of these barrels were stenciled: "Fancy Evaporated Eggs 254—30—224."

Analysis of this product by the Bureau of Chemistry of this Department showed it to contain 146,000,000 organisms per gram, of which 100,000,000 were of the gas-producing type, indicating the presence of B. coli. Adulteration was therefore charged in the libel because there was present in the product a filthy, decomposed, and putrid animal substance.

On February 27, 1911, Armour & Co., claimants, filed a demurrer to the libel, which demurrer was overruled on March 21, 1911, and the court, after the failure of the claimant to file answer within the ten days granted therefor, entered a final decree on April 24, 1911, pronouncing the merchandise to be adulterated as alleged, and ordering its destruction.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 30, 1911.*

1964°—No. 1005—11

F. & D. Nos. 2204 and 2205.
S. No. 805.

Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1006.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO CATSUP.

On December 27, 1910, the United States Attorney for the District of Massachusetts, acting upon the report of the Secretary of Agriculture, filed a libel for seizure and condemnation in the District Court of the United States against 175 cases of tomato catsup, in possession of the New York, New Haven & Hartford Railroad Co., Boston, Mass., alleging that the product had been transported, in two lots, on or about December 10, 1910, from the State of New Jersey into the State of Massachusetts, and charging adulteration of the product in violation of the Food and Drugs Act. The label on each bottle of the first lot, which consisted of 100 cases of the product, was: "Home Brand Tomato Catsup—Manufactured by R. C. Chance's Sons, Mt. Holly, N. J." The label on each bottle of the second lot, which consisted of 75 cases of the product, was: "Sogood Brand Tomato Catsup—Packed for Wason & Co., Boston, Mass."

Analysis of samples of this product by the Bureau of Chemistry of this Department showed the first lot to contain yeasts and spores 63 per one-sixtieth cmm., bacteria 127,000,000 per cmm., mold filaments in 80 per cent of the fields; and the second lot, yeasts and spores 55 per one-sixtieth cmm., bacteria 150,000,000 per cmm., and mold filaments in 85 per cent of the fields. Adulteration was therefore charged because the product contained a filthy, decomposed, and putrid animal and vegetable substance.

On January 27, 1911, the court decreed the destruction of the merchandise in question.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 3, 1911.*

1964°—No. 1006—11

F. & D. No. 2022.
S. No. 717.
Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1007.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF VINEGAR.

On November 3, 1910, the United States Attorney for the Territory of Arizona, acting upon the report by the Secretary of Agriculture, filed a libel for seizure and condemnation in the District Court of the United States against 9 barrels, more or less, of vinegar, in the possession of Solomon-Wickersham Co. (Inc.), Globe, Ariz., alleging the manufacture of the product by the Sharp Elliott Manufacturing Co., on or about September 17, 1910, in the Territory of Arizona, and charging adulteration and misbranding of the product in violation of the Food and Drugs Act. The containers of this product were labeled: "Fine flavored Table Vinegar—A superior Article for Table Use—A delicious flavored Vinegar, fortified with 90 grains strength of 80% Pure Acetic Acid 'Vinegar Sour'—Colored with burnt sugar—Sharp Elliott Mf'g Co., El Paso, Tex."

Analysis by the Bureau of Chemistry of this Department of a sample of this product showed it to contain a dilute solution of acetic acid colored with burnt sugar in imitation of cider vinegar. Adulteration was, therefore, charged because the product was colored in a manner whereby its inferiority was concealed. Misbranding was charged in that the statements on the labels were false and misleading and calculated to deceive the purchaser, and in that the product was offered for sale under the distinctive name of another article.

On March 19, 1911, the court, sustaining the charge in the libel, entered a decree of condemnation and confiscation of the product, with the proviso that, upon the payment of the costs and the execution of a bond by the Sharp Elliott Manufacturing Co., claimants, conditioned as provided by section 10 of the Food and Drugs Act, the goods seized be released and delivered to the company.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 30, 1911.*

1964°—No. 1007—11

F. & D. No. 2212.
S. No. 808.

Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1008.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO PASTE.

On December 29, 1910, the United States Attorney for the Northern District of Illinois, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 120 cases containing 6,200 cans of tomato paste in possession of Henry Horner & Co.

Examination of samples from said consignment by the Bureau of Chemistry, United States Department of Agriculture, showed it to have an offensive odor, and to contain pieces of decayed tissue of microscopic size, yeasts and spores 300 per one-sixtieth cmm., bacteria 500,000,000 per cc., and mold filaments in 58 per cent of fields. The libel alleged that the tomato paste, after transportation from New Jersey into Illinois, remained in the original unbroken packages, and was adulterated in violation of the Food and Drugs Act of June 30, 1906, because it consisted in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, and was, therefore, liable to seizure for confiscation. No appearance having been entered by any claimant to the property, the case went by default.

Accordingly, on May 9, 1911, on motion, an order of default, decree, and summary judgment of destruction was entered by the court, and the marshal was ordered to destroy the product.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 30, 1911.*

1961°—No. 1008—11

F. & D. No. 2366.
I. S. No. 15958-b. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1009.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF "POWD. ALEX. SENNA."

On February 24, 1911, the United States Attorney for the Eastern District of Wisconsin, acting upon the report by the Secretary of Agriculture, filed information in the said District Court of the United States against Huber & Fuhrman Drug Mills, alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 28, 1910, from the State of Wisconsin into the State of California, of a quantity of a certain drug product denominated "Powd. Alex. Senna," which was misbranded.

Analysis by the Bureau of Chemistry showed that sand and foreign vegetable tissue had been substituted in part for senna leaves, and that the sample contained 30.81 per cent of ash. Misbranding was alleged because the statement on the label, "Powd. Alex. Senna," was false and misleading in this, to wit, that it represented said product to consist entirely of powdered senna leaves when in fact sand and foreign vegetable tissue had been substituted in part for senna leaves.

On April 27, 1911, the defendant pleaded guilty and was fined $25, which fine was paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 30, 1911.*

1964°—No. 1009—11

F. & D. No. 1406.
I. S. No. 10237–b.

Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1011.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF GROUND KAMALA.

On July 18, 1910, the United States Attorney for the Southern District of Illinois, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against Allaire Woodward & Co., alleging shipment by said company, in violation of the Food and Drugs Act, on October 13, 1909, from the State of Illinois into the State of California, of a pound package of a drug denominated ground kamala. The label on the product states it to be ground kamala.

Analysis by the Bureau of Chemistry showed the product to be a mixture of kamala and sand, the latter ingredient forming 40 per cent of the product. Adulteration and misbranding were alleged for the reason that the drug was not ground kamala, but kamala so mixed with sand as to reduce its strength and purity far below the professed standard of quality under which it is sold, and the statement on the label that the product was ground kamala was therefore false and misleading.

On April 25, 1911, defendant pleaded guilty and was fined $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 1, 1911.*

1963°—No. 1011—11

F. & D. No. 1658.
I. S. No. 14321–b. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1012.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF POWDERED COLOCYNTH.

On October 1, 1910, the United States Attorney for the Southern District of Illinois, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against Allaire Woodward & Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on the 2d day of December, 1909, from the State of Illinois into the State of Virginia, of a pound package of powdered colocynth, which was adulterated and misbranded. The label on said package contained the statement: "One pound strictly pure powdered colocynth."

Analysis by the Bureau of Chemistry showed the product to consist largely of seeds. Adulteration was alleged for the reason that the product did not meet the standard of strength, quality, or purity as laid down in the United States Pharmacopœia, and misbranding was alleged for the reason that the label set forth that the product consisted of strictly pure powdered colocynth, when as a matter of fact it consisted of colocynth and the seeds of colocynth, and for the further reason that it was an imitation of and offered for sale under the name of another article, to wit, powdered colocynth.

On April 25, 1911, the defendant company entered a plea of guilty and was fined $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 1, 1911.*

1963°—No. 1012—11

F. & D. No. 1723.
I. S. No. 16652—b.
Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1013.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF CAYENNE PEPPER.

On March 9, 1911, the United States Attorney for the Eastern Division of the Eastern Judicial District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Hanley & Kinsella Coffee & Spice Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about February 7, 1910, from the State of Missouri into the State of Mississippi, of a box of cayenne pepper which was adulterated. The label on said box contained the statements: "Silver Shield Brand Cayenne. Hanley & Kinsella Coffee & Spice Co., St. Louis, Mo."

Analysis by the Bureau of Chemistry showed that the product contains ash 6.68 per cent, ash insoluble in hydrochloric acid 1.10 per cent, and crude fiber 22.42 per cent. The percentage of ash insoluble in hydrochloric acid represents the amount of sand present in this product. Adulteration was alleged in the information for the reason that a substance, to wit, sand, had been mixed and packed with said product so as to reduce or lower or injuriously affect its quality or strength.

On May 9, 1911, the defendant entered a plea of nolo contendere and was fined $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 1, 1911.*

1963°—No. 1013—11

F. & D. No. 1792.
I. S. No. 19721–b. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1014.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF COFFEE.

On January 31, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against The Brokaw Merchandise Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on May 14, 1910, from the State of Missouri into the State of Illinois of a tin pail containing 10 pounds of coffee, which was misbranded. The pail containing said coffee bore no label, but said coffee was invoiced and sold as Java and Mocha coffee.

Analysis by the Bureau of Chemistry showed the product to consist of a mixture of Santos and Bourbon coffees and to contain neither Java nor Mocha. Misbranding was alleged because said coffee was an imitation of and offered for sale and was sold under the distinctive name of another article of coffee, to wit, Java and Mocha coffee, when in fact said coffee was not Java and Mocha coffee, but was another and different brand and variety of coffee, to wit, Santos and Bourbon coffee, and contained neither Java nor Mocha coffee; and, further, because said tin pail containing said coffee was not labeled, branded, or tagged so as to plainly indicate that it contained Santos and Bourbon coffee, and that the words "compound, imitation, or blend" were not contained on the label or package containing said coffee.

The defendant pleaded guilty and was fined $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 1, 1911.*

1963°—No. 1014—11

F. & D. No. 1793.
I. S. No. 19726-b. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1015.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF MAPLE SUGAR.

On January 31, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Brokaw Merchandise Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about May 14, 1910, from the State of Missouri into the State of Illinois, of a box containing, among other things, three 1-pound cakes of a product denominated maple sugar. The product in question bore no label or brand, other than the words "Blended Cane and Maple Sugar," which were faintly moulded in the cakes, but was sold and invoiced as maple sugar.

Analysis by the Bureau of Chemistry showed the product to consist of a mixture of cane and maple sugar. Adulteration was alleged for the reasons that said product was sold and invoiced as maple sugar, when, in fact, another substance, known as cane sugar, had been mixed and packed with said product so as to reduce, or lower, or injuriously affect its quality or strength; and a substance known as cane sugar had been substituted in part for said product, designated and sold for maple sugar. Misbranding was alleged for the reasons that said article was sold and invoiced as maple sugar, when, in fact, said product was an imitation of and was sold under the distinctive name of another article, to wit, maple sugar, when in fact said product was not maple sugar, but a mixture of cane sugar and maple sugar, and because said product was not labeled, branded, or tagged so as to plainly indicate that it was a compound or blend of cane and maple sugar, and the words "compound, imitation, or blend" were not plainly stated on said package in which said product was sold.

When the case came on for hearing a nolle prosequi was entered as to the count alleging adulteration of the sugar, and the defendant pleaded guilty to the count alleging misbranding, and was fined $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 1, 1911.*

1963°—No. 1015—11

O

F. & D. No. 23.
S. No. 36. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1016.

SUPPLEMENTAL TO NOTICE OF JUDGMENT NO. 88.

(Given pursuant to section 4 of the Food and Drugs Act.)

BOND FORFEITURE (WINE).

On April 20, 1908, there was entered in the District Court of the United States for the Eastern District of Louisiana at New Orleans a decree of condemnation and forfeiture against 1,298 barrels of misbranded wine which had been seized by process of libel under section 10 of the Food and Drugs Act of June 30, 1906. Part of the wine was labeled: (a) " Claret Wine, Serial No. 3255. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and 1/10 of 1% benzoate of soda." (b) " Vino Type, Serial No. 3255. Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and 1/10 of 1% benzoate of soda."

The decree pronounced the 1,298 barrels of wine misbranded and contained a proviso that the product should be released to the claimants (John G. Dorn, the Sweet Valley Wine Co., and the A. Schmidt Jr. & Bros. Wine Co.) on the filing of a satisfactory bond in the sum of $1,000 each that the wine should not be disposed of by them contrary to the provisions of the Food and Drugs Act. Satisfactory bond in the amounts specified by the court having been filed, the wine was released. Subsequently, on the 28th day of April, 1908, John G. Dorn, through his agent, Thomas F. Cunningham, sold and delivered to Henry Lochte Co. (Ltd.), a corporation doing business in the city of New Orleans, La., five barrels of the wine which had been condemned in the above-mentioned decree and which formed part of the wines released under the provisions of the bond filed by claimants, without, prior to such sale and delivery, changing the labels of said wine, but on the contrary retaining thereon the original labels, which, on three of the said barrels were as follows: " Vino Type, Serial No.

3255, Guaranteed under the National Pure Food and Drugs Act. Containing 1/10 of 1% benzoate of soda," and on two barrels: "Claret Wine, Serial No. 3255, Guaranteed under the National Pure Food and Drugs Act. Containing harmless coloring and 1/10 of 1% benzoate of soda."

On the 20th day of May, 1908, John G. Dorn, through his agent, Thomas F. Cunningham, sold and delivered to F. Hollander & Co. one barrel of wine which had been condemned by the decree of the court and which formed part of the wines released under the aforementioned bond. While a new label was placed on the said barrel, to wit, "Grape Pomace, Wine Vino—Made with Grape Sugar—Containing harmless color and 1/10 of 1% of benzoate of soda," in point of fact the substance used in said wine as one of its constituent parts was starch sugar instead of grape sugar, and therefore the wine was misbranded, as the label represented it to be what it was not, in violation of the conditions of the said bond.

Acting on a report of the Secretary of Agriculture, the United States attorney filed a petition alleging that the said sale was in violation of the terms of the bond, and praying forfeiture of the amount of the bond.

On May 19, 1910, judgment was entered in favor of the United States in solido for the sum of $1,000, with legal interest thereon from June 16, 1908, until paid, and all costs of the suit.

On May 28, 1910, a petition for a writ of error was filed, which was granted on the same day. The case was heard in April, 1911, in the Court of Appeals for the Fifth Circuit, where the judgment of the lower court was affirmed.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 6, 1911.*

1016

O

F. & D. No. 256.
S. No. 115. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1017.

SUPPLEMENTAL TO NOTICE OF JUDGMENT NO. 58.

(Given pursuant to section 4 of the Food and Drugs Act.)

BOND FORFEITURE (COFFEE).

On December 14, 1908, there was entered in the District Court of the United States for the Southern District of Ohio a decree of condemnation and forfeiture against 60 cases, more or less, of misbranded coffee, which had been seized by process of libel under section 10 of the Food and Drugs Act. Part of the coffee was labeled on the shipping cases: "Climax Java Blend Coffee. Climax Coffee & Baking Powder Co., Indianapolis, Indiana," and on the unit packages: "Climax Package Coffee, a combination of high grade, old crop coffee of scientific blending."

The decree pronounced the coffee to be misbranded because it was not a combination of high grade, old crop coffee of scientific blending, but consisted of an inferior, ordinary stock coffee, and contained a proviso that the coffee should be released to the claimants on the filing of a satisfactory bond that the goods should be labeled and branded properly within the meaning of the act. On December 15, 1908, the Climax Coffee & Baking Powder Co. filed a bond in the sum of $1,000 and the coffee was released. Subsequently there was sold by the J. C. Kerr Co. three packages of said coffee bearing the above-described label, and acting on a report of the Secretary of Agriculture the United States Attorney filed a petition alleging that said sale was in violation of the terms of the bond, and praying forfeiture of the amount of the bond. On July 13, 1909, the court gave judgment in favor of the United States for $200 and costs, aggregating $221.86, which was paid by the Climax Coffee & Baking Powder Co.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 3, 1911.*

1963°—No. 1017—11

I S. Nos. 3359–c and 3372–c.
F. & D. No. 2314. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1018.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF BUTTER.

On April 11, 1911, the United States Attorney for the Southern District of Iowa, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against S. P. Pond Co. (Inc.), Keokuk, Iowa, charging shipment by that company, in violation of the Food and Drugs Act, on or about October 9 and 14, 1910, from the State of Iowa into the State of Pennsylvania, of a quantity of butter which was misbranded. The product was labeled (on the top of the packages) "Gold Seal Warranted Pure Fine Fresh Butter," and on the sides of the packages were the words "Process Butter."

Analysis by the Bureau of Chemistry showed the product to be renovated butter. Misbranding was therefore charged for the reason that the label on the top of the packages of the product was false and misleading and calculated to deceive the purchaser and because the words "Process Butter" which appeared upon the sides of the packages did not lessen the deceit created by the top label, for when exposed for sale, the packages were so arranged that the words "Process Butter" were entirely hidden from view.

At the same term of court the defendant pleaded guilty, and was fined $200 and costs. On June 7, 1911, the court reduced said fine to $75.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 3, 1911.*

1693°—No. 1018—11

F. & D. No. 1826.
I. S. No. 16602–b. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1019.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF DR. MOFFETT'S TEETHINA.

On January 31, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against T. N. Flourney, St. Louis, Mo., doing business under the name of C. J. Moffett Medicine Co., charging shipment by him, in violation of the Food and Drugs Act, on or about October 25, 1909, from the State of Missouri into the State of Tennessee, of a package or carton containing a dozen boxes of the product called "Dr. Moffett's Teethina," which was misbranded. The labels and brands on the package or carton containing said product and the circulars enclosed therewith represented that the product "aids digestion, heals eruptions and sores, will stop and prevent the tendency to colic," and that "Teethina has saved the lives of thousands of children in the Doctor's native state where physicians prescribe it and all mothers give it," and that "Teethina's speedy removal of sores and eruptions upon the skin have been remarkable." The labels further represented that there is "nothing like it to remove and prevent the accumulation of worms in children;" that it is "an effectual remedy for cholera-infantum, diarrhœa, dysentery, cholera-morbus, colic, thrush, hives, eruptions and sores on the skin;" and that it "strengthens the child and makes teething easy."

Analysis by the Bureau of Chemistry showed the product to be a powder consisting essentially of opium, calomel, calcium carbonate, and powdered cinnamon. Misbranding was therefore charged for the reason that the labels on the packages bore statements regarding the ingredients or the substances therein which statements were false and misleading and calculated to deceive the purchaser by reason of the facts that the product did not possess power to aid digestion; nor sufficient medicinal value to heal eruptions and sores; nor the power

to prevent the tendency to colic; nor could it speedily remove sores and eruptions upon the skin; nor was the statement that the product had saved the lives of thousands of children true; nor was the article an efficient remedy to remove and prevent the accumulation of worms in children; nor an effectual remedy for cholera-infantum, diarrhœa, dysentery, cholera-morbus, colic, thrush, hives, eruptions and sores on the skin; nor did it possess such powers and properties as will strengthen the child and make teething easy.

On April 14, 1911, the defendant pleaded guilty, and was fined $10 and costs, which he paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 5, 1911.*

1019

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F. & D. Nos. 1596, 1597, and 1601.
I. S. Nos. 4192–b, 4193–b, and 12230–b. Issued August 15, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1020.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF CHAMPAGNE.

On July 11, 1910, the Grand Jury of the United States for the Northern District of California, in the city of San Francisco, after presentation by the United States Attorney for that district upon the report of the Secretary of Agriculture, found an indictment against Ernest Schraubstadter and Emile A. Groezinger, doing business in San Francisco, Cal., under the name of A. Finke's Widow, charging, in three separate counts, three shipments in violation of the Food and Drugs Act—two directly by the defendants named, on or about December 28, 1909, from the State of California into the State of Washington, and the other by McDonald & Cohn, San Francisco, Cal., some time after November 23, 1909, from the State of California into the State of Arizona—of ten and two cases of half bottles of champagne, respectively, which were misbranded under section 8 of the act. The first two shipments were of five cases each.

The indictment further charged in the third count that the defendants Schraubstadter and Groezinger sold and delivered to McDonald & Cohn, on or about November 23, 1909, the two cases of half bottles of champagne subsequently shipped by them as indicated, and that on January 22, 1910, the defendants, in addition to the printed guaranty upon the main label on each of the bottles in the two cases of champagne, gave a written guaranty that the goods conformed to the provisions of the Food and Drugs Act, which guaranty was false and illegal, under section 9 of the act.

The label on the neck of each of the bottles in five cases shipped by defendants contained the words: "Champagne Brand Dufleur Fils & Cie. Grand Vin Royal. Guaranteed under the Pure Food and

Drugs Act, June 30th 1906, Serial No. 7016," (with a design of a fancy coat of arms).

The label on the neck of each of the bottles in the other five cases shipped by the defendants contained the words "Extra dry" (with a design of a crown), and the main label on each of the bottles contained the words: "Crown brand champagne" (with the design of a crown and crossed scepter), and underneath the words "Guaranteed under the National Pure Food and Drugs Act, June 30th, 1906."

The label on the neck of each of the bottles in the two cases specially guaranteed by the defendants to McDonald & Cohn, and shipped by them as indicated, contained the words "Extra dry champagne" (with a design of a shield and the monogram A. F. W.), and the main label on each bottle contained the words "Cuvee Special E. L. Mercier & Cie. Brand Extra Dry. Guaranteed under the Pure Food and Drugs Act, June 30th, 1906. Serial No. 7016."

Examination by the Bureau of Chemistry of samples of every one of the three shipments of the product showed that the article was not champagne, but a white wine artificially carbonated, and of domestic manufacture. Misbranding was therefore charged by the indictment for the reason that the product was labeled and branded so as to deceive and mislead the purchaser, and purported to be a foreign product when it was of domestic origin. False and illegal guaranty by the defendants was charged because they gave to the dealer, McDonald & Cohn, a guaranty signed by them, to the effect that the product was not misbranded within the meaning of the Food and Drugs Act when in fact it was misbranded.

On April 4 and 5, 1911, after general demurrer to the indictment, which was overruled, and waiver of a jury by the defendants, the case was tried by the court, and the defendants were convicted and fined $100 each. In his memorandum decision, Dietrich, D. J., said:

That my views upon certain questions discussed at the trial may not be misunderstood they are stated to be as follows:

First. In an indictment charging the violation of the provisions of section two of the "Pure Food Act," approved June 30th, 1906, it is not incumbent upon the government either to charge or to prove compliance by the administrative officers with the provisions of Section 4 of the Act, whether the hearing therein prescribed has or has not taken place.

Second. By reason of the provisions of Section 9 of the Act, the third count is deemed to state a public offense.

Third. The term "Champagne" when used alone and apart from any qualifying or descriptive words is commonly understood to describe an effervescent or sparkling wine produced in a province of France, the gas therein being the result of natural fermentation. It is therefore thought that a bottle containing wine produced in California and labeled "Champagne" without any other qualifying or descriptive words, tends to mislead and deceive and is "misbranded" under the provisions of the Pure Food Act.

Fourth. It is further thought that a bottle containing a wine having substantially the same qualities as the champagne manufactured in France and produced substantially in the same way, although originating in California should not be held to be misbranded if it is labeled "California Champagne," or if by some other device conspicuously displayed in connection with the word champagne, purchasers are clearly advised that the bottle does not contain a product of France.

Fifth. Upon the question whether or not a wine artificially carbonated, may, under any circumstances or wherever produced, be legitimately labeled champagne, I express no opinion. It is doubted whether the record here presents the question with such fullness as its very great importance requires.

Sixth. Specifically I find that the label on each of the three bottles received in evidence in support of the three several counts of the indictment, is misleading. Considering the form and dress of each package as a whole there is little room for doubt of a design upon the part of the originator to create in the minds of consumers the impression that they are purchasing a foreign and not a domestic product.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 6, 1911.*

1020

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F. & D. No. 2434.
S. No. 852.

Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1021.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF SHAD.

On February 16, 1911, the United States Attorney for the District of Columbia, acting upon the report of the Secretary of Agriculture, filed in the Supreme Court of said district a libel praying condemnation and forfeiture of 40 cold-storage shad, more or less, found in the premises of R. W. Claxton at No. 940½ Louisiana Avenue Northwest, in the city of Washington.

Examination of said fish by the Bureau of Chemistry of the United States Department of Agriculture showed them to consist of a filthy, decomposed, or putrid substance. The libel charged that said shad were adulterated in violation of the Food and Drugs Act of June 30, 1906, because they and each of them consisted in whole or in part of a filthy, putrid, or decomposed animal substance, and that they were therefore liable to seizure for confiscation.

On March 8, 1911, Richard W. Claxton filed answer to said libel and offered no objection to the decree of condemnation. Accordingly, a decree was entered on May 12, 1911, finding said shad to be adulterated as alleged in the libel, and condemning and forfeiting them to the United States, and ordering their destruction by the United States marshal, and payment by the said Richard W. Claxton of all the costs in said proceedings.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 6, 1911.*

2169°—No. 1021—11

F. & D. No. 2600.
S. No. 926.
Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1022.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TURPENTINE.

On April 19, 1911, the United States Attorney for the District of Columbia, acting upon the report of the Secretary of Agriculture, filed in the Supreme Court of said District, holding a District Court, a libel praying condemnation and forfeiture of ten gallons, more or less, of turpentine, in the possession of Z. D. Gilman, of the city of Washington, District of Columbia.

Analyses of samples of said turpentine by the Bureau of Chemistry of the United States Department of Agriculture showed said turpentine to contain 8 per cent of mineral oil, and therefore to be liable to seizure for confiscation. The libel alleged that the turpentine, after transportation from the State of New York into the District of Columbia, remained in the original unbroken packages, and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906. Adulteration was alleged because said product was sold under a name, to wit, turpentine, recognized in the United States Pharmacopœia and National Formulary, when in fact the product differed from the standards of strength, quality, and purity as determined by the tests laid down in the said United States Pharmacopœia and National Formulary, and further because a substance, to wit, mineral oil, had been mixed with said product, so as to reduce, lower, or injuriously affect its quality or strength. Misbranding was alleged because the statement on the boxes, to wit, "Turpentine, 5 Gals", was false and misleading, and calculated to deceive or mislead the purchaser into the belief that it was a pure turpentine, when in fact it was not pure turpentine, but a mixture containing mineral oil, in addition to the turpentine therein contained.

No claim was filed for the merchandise and, on the 12th day of May, 1911, the court found the said product to be adulterated and misbranded within the meaning and intent, and in violation of the aforesaid act, and that the United States was entitled to a decree of condemnation as prayed for in the libel. Accordingly, on said day the court entered its decree, condemning and forfeiting said product to the United States, and ordering its destruction by the marshal.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 6, 1911.*

2169°—No. 1022—11

F. & D. No. 1819.
S. No. 641. Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1023.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF VINEGAR.

On September 13, 1910, the United States Attorney for the District of Maryland, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for the said district a libel praying condemnation and forfeiture of 25 barrels of vinegar, found on the premises of the Kenneweg Company, in the city of Cumberland, State of Maryland.

Examination of samples from said consignment, made by the Bureau of Chemistry of the United States Department of Agriculture, revealed that it was not pure apple cider vinegar, but consisted in whole or in part of a foreign material, high in reducing sugars, dilute acetic acid, or distilled vinegar, and added ash material which had been prepared in imitation of cider vinegar. The libel alleged that the vinegar, after transportation from the State of Virginia into the State of Maryland, remained in the original unbroken packages, and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906, and it was therefore liable to seizure for confiscation. Adulteration was alleged because certain substances, to wit, a foreign material high in reducing sugars, dilute acetic acid, and ash material, had been mixed with said vinegar, so as to injuriously affect its quality and strength, and also because the aforesaid ingredients concealed the inferiority of said product. Misbranding was alleged because the statement on the label, to wit, "Pure Apple Cider Vinegar", was false and misleading.

On October 20, 1910, Board Armstrong & Co. appeared as claimants and filed answer to said libel, denying all of its material allegations. On May 12, 1911, the said company, by leave of court, withdrew said answer, and filed amended answer consenting to a decree of condemnation, which said answer was in substance as follows: That the

vinegar seized under the said libel was not manufactured by said company, but was purchased by it in good faith from other parties, upon the representation made by the vendors that the same was pure apple cider vinegar; that the company caused the same to be analyzed and was informed by the chemist that the vinegar was pure apple cider vinegar; that the company sold the vinegar in the same condition, in good faith, in which it received the same; and that the company had no interest in further defending said vinegar, and would not oppose a judgment of condemnation thereof.

On May 12, 1911, on motion, the court ordered that the aforesaid vinegar described in said libel be condemned, and all right, title, and interest forfeited to the United States of America, and further, that Board Armstrong & Co. pay all the costs of this libel proceedings. On the same date it was further ordered by the court that the said vinegar be destroyed by the United States marshal for the District of Maryland, on the 15th day of May, 1911, provided, however, that said vinegar should be delivered to the claimant upon payment of all costs of this libel proceedings, and the execution to the United States of America of a sufficient bond in the penal sum of $100, with sureties to be approved by the court, conditioned that said vinegar so libeled shall not be sold or disposed of contrary to the provisions of the Food and Drugs Act of June 30, 1906, or of the laws of any State or Territory, District of Columbia, or insular possession of the United States.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 6, 1911.*

1023

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F. & D. No. 2589.
I. S. No. 10167–c.
Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1024.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF RHEUMATIC CURE.

On April 29, 1911, the United States Attorney for the Eastern District of Wisconsin, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Fitch Remedy Co., Racine, Wis., alleging shipment by said company, in violation of the Food and Drugs Act, on or about the first day of December, 1910, from the State of Wisconsin into the State of Minnesota, of three bottles of a drug denominated "Rheumatic Cure," which was misbranded. The bottles were labeled: "Rheumatic Cure Guaranteed Fitch Remedy * * * Guaranteed to cure the most stubborn case of Sciatic or Muscular Rheumatism if directions are followed or money refunded * * * This contains 45 per cent Alcohol. * * * Prep. by the Fitch Remedy Co., Racine, Wis."

Analysis by the Bureau of Chemistry showed the product to consist essentially of rhubarb and alcohol; alcohol in one bottle approximately 23.4 per cent, in another bottle 27.7 per cent by volume, nonvolatile residue 21.5 per cent. Misbranding was alleged for the reason that these ingredients do not possess properties to cure the most stubborn case of sciatic or muscular rheumatism, and the statement on the label to that effect was, therefore, false and misleading.

On May 5, 1911, the defendant was arraigned and pleaded guilty and a fine of $10 was imposed and immediately paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 17, 1911.*

4119°—No. 1024—11

F. & D. No. 2511.
I. S. No. 8443–c.
Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1025.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF "CERRODANIE CAPSULES."

On May 3, 1911, the United States Attorney for the Southern District of Illinois, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against Samuel H. Jameson, doing business under the firm name of The Cerrodanie Company, at Decatur, Ill., alleging shipment by him, in violation of the Food and Drugs Act, on or about July 17, 1910, from the State of Illinois into the State of Michigan, of a package of a drug denominated "Cerrodanie Capsules," which was misbranded. The label on said package contained the statements: "* * * The presence of rheumatic germs is the cause of all Neuralgia and Rheumatic troubles. We are the first to discover the true cause of rheumatism * * * and the first to discover * * * a radical and certain cure of this dreaded disease. The author of this pamphlet and originator of Cerrodanie * * * Having thus ascertained the cause, he sought for some remedial agent that would destroy the bacilli * * * he discovered a chemical combination which not only destroyed but also eliminated every germ and from of insect life both from the fluids and solids of the system, and restored the blood to * * * health. This discovery of the * * * cure of rheumatism. Cerrodanie * * * a positive cure for rheumatism."

Analysis by the Bureau of Chemistry showed the capsules to contain sodium salicylate, potassium nitrate, and charcoal; chloroform extract, containing capsicum and an unidentified oily substance, 3.4 per cent; ash (talc, and carbonates and oxides of sodium and potassium), 32.1 per cent. Misbranding was alleged for the reason that the product, as shown by said analysis, did not contain ingredients possessing the therapeutic properties adequate to effect a positive or sure cure for rheumatism or neuralgia, or to eradicate these diseases from the system, and the statements on the labels to that effect were, therefore, false and misleading.

On May 3, 1911, the defendant pleaded guilty and was fined $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 18, 1911.*

4119°—No. 1025—11

F. & D. No. 2610.
S. No. 934.

Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1026.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF GINGER ALE.

On or about April 26, 1911, the United States Attorney for the District of Columbia, acting upon the report of the Secretary of Agriculture, filed in the Supreme Court of said district, holding a district court, a libel praying condemnation and forfeiture of 85 barrels, more or less, of Beaufont Ginger Ale, in the possession of H. M. Wagner & Co. Each of the barrels containing said product was labeled and branded as follows: "The Beaufont Lithia Water Co.—12 Doz. Pints Beaufont Ginger Ale—Delicious Flavor—Perfect Quality—Richmond, Va.", and each of the bottles therein was labeled and branded as follows: "The Perfection of Purity and Excellence—Beaufont Medicinal Ginger Ale—Highest Quality—Refreshing Invigorating—The Beaufont Lithia Water Co., Richmond, Va., U. S. A."

Examination of samples of said product and of bottles containing the same, made by the Bureau of Chemistry of the United States Department of Agriculture, disclosed the presence of ginger and capsicum and showed that there was nothing used in the manufacture of the product which would entitle it to be termed "the perfection of purity and excellence", nor the "highest quality", nor "medicinal", as stated on the aforesaid labels; and that of two of the bottles examined containing said product one was 25.6 per cent short measure and the other 28.1 per cent short measure.

The libel as amended on May 15, 1911, alleged that the ginger ale, after transportation from Virginia into the District of Columbia, remained in the original unbroken packages and was misbranded in violation of the Food and Drugs Act of June 30, 1906, because the

aforesaid labels represented said product to be the perfection of purity and excellence and a ginger ale of the highest quality, and also a medicinal ginger ale and a ginger ale having medicinal properties and producing medicinal and therapeutic affects; whereas, in fact, the aforesaid product was not the perfection of purity and excellence, nor of the highest quality, nor was it a medicinal ginger ale, nor did it contain medicinal or therapeutic ingredients; and, further, because the labels on the barrels containing said product stated the bottles to be pint bottles; whereas, in fact, they were not pint bottles as aforesaid, and that said product was, therefore, liable to seizure for condemnation. Thereupon the Beaufont Lithia Water Co. entered its appearance as claimant of the aforesaid product and filed its answer to said amended libel, admitting the allegations thereof to be true and consenting to a decree of condemnation against the aforesaid product, and expressing, further, its willingness to pay the costs of said proceedings and praying that the aforesaid goods be released to it upon the giving of a proper and suitable bond in accordance with the requirements of the aforesaid act.

On May 15, 1911, the court found the product misbranded as alleged in the amended libel and that the United States was entitled to the decree of condemnation as prayed for in said amended libel. Accordingly, on the same day a decree was entered condemning and forfeiting said goods to the United States and ordering that the goods be released to the claimant upon the payment of the costs and the filing of a bond in the penal sum of $650, to be approved by the court, conditioned that said product should not be disposed of contrary to the provisions of the aforesaid act of Congress.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 19, 1911.*

1026

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F. & D. No. 2103.
S. No. 756.

Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1027.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED ADULTERATION OF FROZEN EGG PRODUCT.

On November 23, 1910, the United States Attorney for the District of New Jersey, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 443 cans of frozen egg product in the possession of the Merchants Refrigerating Co., Jersey City, N. J.

Examination by the Bureau of Chemistry, United States Department of Agriculture, of samples of said product showed it to contain added sugar and 6,000,000 organisms per gram, 100,000 of said organisms being of the gas-producing type. The libel alleged that the frozen egg product after transportation from the State of Kansas into the State of New Jersey remained in the original unbroken packages and was adulterated in violation of the Food and Drugs Act of June 30, 1906, because sugar had been added thereto and had been substituted in part therefor, and because it consisted in whole or in part of a filthy, decomposed, and putrid animal substance, and was, therefore, liable to seizure for confiscation.

On January 4, 1911, the H. J. Keith Co. filed answer to said libel, a jury was waived, and the case was heard by the court which rendered its opinion in form and substance as follows:

UNITED STATES CIRCUIT COURT, DISTRICT OF NEW JERSEY.

UNITED STATES OF AMERICA
vs.
443 CANS OF FROZEN EGG PRODUCT.

The COURT (Cross, District Judge, orally): This is a suit brought by the Government against 443 cans of frozen egg product, to condemn this egg substance, under the Pure Food Law; the Government claiming that, under that

F. & D. No. 2577.
I. S. No. 8317–c.

Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1028.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF CONDENSED MILK.

On April 19, 1911, the United States Attorney for the Eastern District of Wisconsin, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Delavan Condensed Milk Co., Delavan, Wis., alleging shipment by said company, in violation of the Food and Drugs Act, on December 2, 1910, from the State of Wisconsin into the State of Missouri, of 47 cans of a food product denominated condensed milk which was misbranded. The labels on these cans contained the following statement: "Beauty Brand Unsweetened Evaporated Milk Tall Size Net Weight 16 oz. Manufactured by Delavan Condensed Milk Co."

An examination made by the Bureau of Chemistry of the United States Department of Agriculture of said cans of milk showed them to be short in weight, the net weight of said cans ranging from 14.87 ounces to 15.81 ounces, the average shortage being 2.95 per cent. Misbranding was alleged for the reason that said labels on said article purported that each of said 47 cans were full weight, that is to say, possessed a net weight of 16 ounces, whereas, in fact, said cans were short in weight, as aforesaid, and the statement on the label was therefore false and misleading.

On May 17, 1911, the defendant was arraigned, pleaded guilty, and was sentenced to pay a fine of $25, which fine was paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 22, 1911.*

4845°—No. 1028—11

F. & D. No. 1834.
I. S. Nos. 18523-b and 18524-b. Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1029.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF LEMON EXTRACT AND VANILLA EXTRACT.

On November 18, 1910, the United States Attorney for the District of Massachusetts, acting upon the report of the Secretary of Agriculture, filed information in the District Court for said district against Charles Crompton, doing business under the name of Charles Crompton & Sons, alleging shipment by him, in violation of the Food and Drugs Act, on January 13, 1911, from the State of Massachusetts into the State of New Hampshire, of a certain quantity of lemon extract and vanilla extract, which were adulterated and misbranded. The labels on the packages containing the lemon extract and the vanilla extract contained the following statements, respectively: "Crompton's Bay State Brand Extracts, Essences, and Tinctures Lemon. Chas. Crompton & Sons, Lynn, Mass. Formula. Oil of Lemon, about .04, Alcohol about .58, Water, about .38, Color, a trace." and "Crompton's Bay State Brand Extracts, Essences, and Tinctures Vanilla. Formula: Vanilla Bean .100, Vanillin, .012, Coumarin .001, Alcohol and Water .677, Sugar, .200, Caramel .010. Guaranteed by Charles Crompton & Sons, under the Food and Drugs Act of June 30, 1906, Serial No. 1419."

Analyses by the Bureau of Chemistry of the United States Department of Agriculture showed the so-called lemon extract to be an artificially colored solution, containing about 44.65 per cent alcohol by volume and 1.06 per cent oil of lemon by volume, and the so-called vanilla extract to be an artificially colored solution containing alcohol by volume 8.86 per cent, vanillin 0.606 per cent, coumarin 0.03 per cent, and no vanilla resins.

Adulteration of the so-called lemon extract was alleged in the first count of the information for the reason that lemon extract is known to the trade and generally understood by the public to be the flavoring extract prepared from oil of lemon or from lemon peel, or both, and contains not less than 5 per cent by volume of oil of lemon, whereas there had been mixed and packed with said lemon extract a substance, to wit, a dilute terpeneless extract of lemon, so as to reduce and lower and injuriously affect its quality and strength. Misbranding of said lemon extract was alleged because the label contained the statements that said product was a lemon extract and contained about 4 per cent of oil of lemon, which said statements were false and misleading, in that said product was not a lemon extract and did not contain about 4 per cent of oil of lemon, but contained only 1.6 per cent of said oil of lemon.

Misbranding of the so-called vanilla extract was alleged because vanilla extract is known to the trade and generally understood by the public to be the flavoring extract prepared from vanilla beans, with or without sugar or glycerine, and contains in 100 cubic centimeters the soluble matters from not less than 10 grams of the vanilla bean, whereas the label on the package containing the aforesaid vanilla extract stated the contents to be vanilla extract and to contain about one-tenth part of vanilla bean, which said statements were false and misleading, in that said product was not a vanilla extract and did not contain about one-tenth part of vanilla bean.

On May 10, 1911, the defendant was tried by a jury. No evidence was introduced concerning the adulteration of the aforesaid lemon extract, as alleged in the first count of the information, and the defendant was found not guilty thereon, but a verdict of guilty was rendered by the jury on the second and third counts of said information.

On May 12, 1911, the defendant was sentenced to pay a fine of $50, which fine was immediately paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 24, 1911.*

1029

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F. & D. No. 2606.
S. No. 929. Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1030.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF RICE.

On April 24, 1911, the United States Attorney for the District of Columbia, acting upon the report of the Secretary of Agriculture, filed in the Supreme Court of said District, holding a district court, a libel, praying condemnation and forfeiture of 25 sacks, more or less, of an article purporting to be rice, found in the possession of Liebman Bros.

Examination of samples of said product by the Bureau of Chemistry of the United States Department of Agriculture showed the said product to be coated with glucose and talc. The libel alleged that the said rice, after transportation from the State of Louisiana into the District of Columbia, remained in the original unbroken packages and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906, because the said rice had been mixed, colored, powdered, coated, and stained with glucose and talc in a manner whereby damage and inferiority were concealed. Misbranding was alleged because said article was sold under a distinctive name, to wit, rice, when, in fact, said article was not rice, nor entitled to be so called, but consisted in part of rice and in part of two other substances commonly known and described as glucose and talc, and that the said article was therefore liable to seizure for confiscation.

On May 15, 1911, the Louisiana Molasses Co., a corporation, appeared and filed a plea and answer, admitting the charges contained in the libel and consenting to a decree of condemnation against said goods, whereupon the court entered, upon said day, a decree finding said product to be adulterated and misbranded as charged in the libel, and condemning and forfeiting the goods to the United States, with a proviso that said goods should be delivered to the claimant upon payment of all costs of the proceedings by the claimant and the execution by it of a good and sufficient bond, with surety, to be approved by the court, in the penal sum of $170, conditioned that none of the aforesaid product should be sold or in any manner disposed of contrary to the provisions of the law.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 31, 1911.*

5267°—No. 1030—11

F. & D. No. 1172.
I. S. No. 5421-b. Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1031.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED ADULTERATION AND MISBRANDING OF "SODA WATER SYRUP COLA."

On June 8, 1910, the United States Attorney for the Northern District of Illinois, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against W. H. Hutchinson & Son, a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about September 8, 1909, from the State of Illinois into the State of Missouri, of a gallon bottle of an article of food denominated "Soda Water Syrup Cola" which was adulterated and misbranded. The label on said product was as follows: "No. 298. Guaranteed under the Food and Drugs Act June 30, 1906. Soda Water Syrup Cola Manufactured by W. H. Hutchinson & Son, Inc., 198 Desplaines St. Chicago. Flavors, Colors, Bottlers Supplies."

Analysis by the Bureau of Chemistry showed the product to consist of a syrupy liquid containing among other ingredients coca leaf alkaloids, including cocaine and a minute quantity of caffeine. Adulteration was alleged because the article of food in said bottle contained an added deleterious ingredient, to wit, cocaine, rendering such article injurious to health; misbranding was alleged for the reason that said product contained cocaine, a statement to which effect did not appear upon the label.

On February 23, 1911, the defendant entered a plea of nolo contendere. On motion of the District Attorney a jury was called; the defendant admitted the charges in the information, and further admitted for the purposes of the case that the cocaine was an added ingredient of the product, and also that it was deleterious, but introduced proof to the effect that the cocaine in said product was mixed therein by accident. The jury returned a verdict of not guilty.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 31, 1911.*

5267°—No. 1031—11

F. & D. No. 2316.
I. S. No. 1316–c. Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1032.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF "ROYAL LITHIA WATER."

On April 17, 1911, the United States Attorney for the Eastern District of Wisconsin, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for the said district against William H. Anderson, Waukesha, Wis., alleging shipment by him, in violation of the Food and Drugs Act, on July 11, 1910, from the State of Wisconsin into the State of Indiana of 10 cases containing each a dozen bottles of a so-called "Royal Lithia Water." The labels on each of said bottles contained the following statement: "Anderson's Royal (Trade Mark) Lithia Water. Cures Rheumatism, Gout, Dropsy, &c., Waukesha, Wisconsin. One of Nature's Best Known Remedies for all Liver, Kidney, Bladder and Stomach Troubles. * * *."

Analysis by the Bureau of Chemistry showed the water to contain only a slight trace of lithium, unweighable in amount. Misbranding was alleged in the first count of the information for the reason that the statements on the above label were false and misleading, and calculated to deceive and mislead the purchaser in that they conveyed the impression that the so-called lithia water possessed and contained therapeutic properties capable of curing rheumatism, gout, dropsy, etc., and to be one of nature's best known remedies for all liver, kidney, bladder, and stomach troubles, whereas in fact said water did not possess such therapeutic properties that would be of any service in the cure of any or all of the various diseases mentioned in said label. Misbranding was alleged in the second count for the reason that the statement on the label "Royal Lithia Water" was false and misleading and calculated to deceive the purchaser, in that it represented said water as containing lithium, whereas in truth and in fact it did not contain lithium in any appreciable amount whatever, and did not contain any quantity sufficient to give and impart the therapeutic effects of lithium when used and consumed in the way that it was designed and intended that it should be used by the purchasers thereof.

On May 6, 1911, the defendant pleaded guilty, and was fined $25.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *July 31, 1911.*

5267°—No. 1032—11

F. & D. No. 2527.
S. No. 902. Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1033.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF POWDERED MILK.

On March 22, 1911, the United States Attorney for the District of New Jersey, acting upon the report by the Secretary of Agriculture, filed a libel for seizure and condemnation in the District Court of the United States, against 10 barrels of powdered milk, in possession of Maurgauries & Shipman, trading as the M. & S. Cocoa and Chocolate Co., Jersey City, N. J., consigned to that company by William J. Tulin, New York, N. Y., and delivered to it by wagon, and charged adulteration of the product in violation of the Food and Drugs Act. It was impossible to determine the nature of the labels on the products on account of mutilation, but analysis by the Bureau of Chemistry of this Department showed that, while the substance generally was sound, a portion of the milk next the sides and ends of the barrels was decomposed and putrid. Adulteration was therefore charged for the reason that the product consisted in part of a decomposed and putrid animal substance.

On April 18, 1911, the court, upon the nonappearance of claimants on the day specified in the notice duly given, ordered judgment by default, and decreed that the product in question be condemned and forfeited to the United States, and forthwith destroyed, as being adulterated as charged in the libel.

James Wilson,
Secretary of Agriculture.

Washington, D. C., *August 1, 1911.*

5876°—No. 1033—11

F. & D. No. 2121.
S. No. 759. Issued August 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1034.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF TOMATO CATSUP.

On November 26, 1910, the United States Attorney for the District of Nebraska, acting upon the report of the Secretary of Agriculture, filed a libel for seizure and condemnation in the District Court of the United States against 600 cans, more or less, of tomato catsup, each of the 600 cans containing 5 gallons, in possession of McCord-Brady Co., Omaha, Nebr., alleging that the product had been transported, on or about October 26, 1910, from the State of Ohio into the State of Nebraska, and charging adulteration and misbranding in violation of the Food and Drugs Act. Each of the cans was labeled "Elks Pride brand Tomato Catsup. Made from tomatoes, granulated sugar, onions, spices and vinegar. Made by The Harbauer-Marleau Company, Toledo, Ohio."

Analysis by the Bureau of Chemistry of this Department showed the product to contain 80,000,000 bacteria per cubic centimeter, and 200 yeasts and spores per one-sixtieth cubic millimeter. Mold filaments were found in 75 per cent of the microscopic fields examined. Adulteration was, therefore, charged for the reason that the product contained a filthy, decomposed, and putrid vegetable substance, and that the substance had been mixed and packed with it so as to reduce or lower and injuriously affect its quality and strength. Misbranding was charged in that the labels on the product were false and misleading in stating the ingredients, and in such a manner as would lead the purchaser to believe that the product was a good, pure, and genuine catsup made of sound and healthful substances, when in fact it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On April 21, 1911, the court, after hearing, sustained the adulteration and misbranding charges in the libel, decreed the condemnation and destruction of the product in question, and taxed the costs of the proceedings against the McCord-Brady Co., claimants.

James Wilson,
Secretary of Agriculture.

Washington, D. C., *August 2, 1911.*

5876°—No. 1034—11

F. & D. No. 1434.
I. S. No. 10502–b. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1035.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED MISBRANDING OF OXIDINE.

On March 29, 1911, the United States Attorney for the Northern District of Texas, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Patton-Worsham Drug Co., a corporation existing under and by virtue of the laws of the State of Texas, and having its principal office in Dallas, Tex., alleging shipment by said company, in violation of the Food and Drugs Act, on or about November 30, 1908, from the State of Tennessee into the State of Georgia, of a consignment of a drug denominated "Tasteless Oxidine," which was misbranded. The labels on the product were as follows: "Trade-mark (registered) tasteless oxidine. Alcohol five per cent. Serial number 1271. Guaranteed under Food and Drugs Act, June 30, 1906. An antidote for malaria, a food digester and constipation remedy. A true tonic and blood medicine. An effective remedy for chills and fevers. A mild liver and kidney medicine, and relieves headache and lagrippe. Price 50 cents. Manufactured only by the Patton-Worsham Drug Co., Dallas, Texas. Memphis, Tenn." and on the back thereof, "Tasteless oxidine. Is prepared especially for children and those who object to the somewhat bitter taste of the regular oxidine. Tasteless oxidine does not enter the blood as rapidly as the regular form, but is a pleasant laxative, acting mildly on the liver, purifying the blood in a manner far superior to any other tasteless preparation on the market, and in mild cases is very effective. But in severe cases we more strongly recommend the regular oxidine;" and upon one side of the carton, the following, to wit: "The life is in the blood. To have health the blood must be pure. Malaria poisons the blood and deters the action of the liver. Oxidine is effective in purifying the blood, regulating the liver, and cleansing your system from malaria, the great cause of sickness:" and upon another side of the carton: "Patton-Worsham Drug Co., Dallas,

Texas. Kennedale, Texas. Dear Sirs: I want to inform you that oxidine has relieved me and my family of the worst siege of chills and malaria that I ever saw. After paying the doctors $50.00 I began the use of oxidine with most gratifying results. We are all entirely well now and there has been no re-appearance of malaria in the family for over two months. You are at liberty to use this testimonial if you desire. Yours truly, J. H. Fielding," and upon the top of carton: "tasteless." and upon the bottle: "Oxidine manufactured by Patton-Worsham Drug Co., Dallas, Texas, Memphis, Tenn. Alcohol five per cent. Guaranteed under the Food and Drugs Act of June 30, 1906, serial No. 1271. Contains no poison or harmful drugs. Directions: Tonic dose for indigestion, liver, blood and general system: Adults, two teaspoonfulls; children under ten years, one teaspoonfull; children under five years, half teaspoonfull. The above to be taken in a little water after each meal. To stop chills and fever double the above of tonic dose and take every four hours. After chills have stopped the medicine should be taken as a tonic to rid the system of malaria and purify the blood. When Oxidine has been prepared for some time an inert sediment forms but does not affect the medical properties at all. It is as good as ever. Shake the bottle before using. Prepared only by Patton-Worsham Drug Co., Dallas, Texas. Memphis, Tenn." and upon the circular accompanying each bottle the following: "Oxidine removes dead germs and other poisonous impurities from the blood. Oxidine is the best tonic and system builder that you can get anywhere." "Oxidine * * * draws out * * * poisons from all parts of the body." "It destroys the germ of malaria." "It * * * restores the organs to a normal condition * * *."

Analysis of a sample of this article by the Bureau of Chemistry showed the following results:

	Per cent by weight.
Alcohol	2.92
Sucrose	57.50
Invert sugar	.20
Anhydrous ether soluble Cinchona alkaloids	.76
Anhydrous potassium and sodium tartrate	1.64
Water, coloring matter, oil of peppermint, trace of chloroform, soluble alkaloids, etc	36.98
	100.00

The preparation does not contain any digestive ferments.

Misbranding was alleged for the reason that the ingredients in said product, as shown by said analysis, did not possess the therapeutic properties claimed for it, and the aforesaid statements on the label were, therefore, false and misleading. When the case came on for

trial the defendant company entered a plea of not guilty. After the introduction of evidence by the Government the defendant moved the court to instruct the jury to return a verdict of not guilty on the authority of the case of United States *v.* O. A. Johnson, 177 Fed. Rep. 313; which motion the court sustained, and directed a verdict for the defendant.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 2, 1911.*

1035

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F. & D. No. 2217.
S. No. 811. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1036.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF CIDER VINEGAR.

On January 3, 1911, the United States Attorney for the Western District of Missouri, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 80 barrels of cider vinegar in the possession of the Security Warehouse Co., Kansas City, Mo.

Examination of samples from said consignment by the Bureau of Chemistry of the United States Department of Agriculture showed the following results: "Solids 1.54%; sugar 0.4%; ash 0.26%; alkalinity of ash 23.8%; acid 6.23%." The libel alleged that the vinegar after transportation from Illinois into the State of Missouri remained in the original unbroken packages, and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Adulteration was alleged because acetic acid or distilled vinegar had been mixed with the product so as to reduce, lower, and injuriously affect its quality or strength. Misbranding was alleged because the statement on the label, to wit, "Cider Vinegar," was false and misleading and calculated to deceive the purchaser.

On May 24, 1911, no person appearing as claimant of said vinegar, it was ordered by the court that the libel be taken pro confesso for default of answer thereto, and that the product be condemned and forfeited to the United States; and the marshal was directed to properly brand said 80 barrels of cider vinegar, indorsing on the label of said barrels the word "imitation" three times as large in size as the words "cider vinegar", and after relabelling to sell the goods at public auction to the highest bidder.

WILLIS L. MOORE,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *August 3, 1911.*

5876°—No. 1036—11

F. & D. No. 2402.
S. No. 838. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1037.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF MUSHROOMS.

On February 7, 1911, the United States Attorney for the Western District of Pennsylvania, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, praying condemnation and forfeiture of a case of dried mushrooms found on the premises located at Nos. 804–806–808 Liberty Avenue, in the city of Pittsburg.

Examination of samples from said consignment made by the Bureau of Chemistry of the United States Department of Agriculture showed them to contain more or less worms and worm excreta. The libel alleged that the mushrooms after transportation from New York into Pennsylvania remained in the original unbroken packages and were adulterated in violation of the Food and Drugs Act of June 30, 1906, because they consisted in whole or in part of a filthy, putrid, or decomposed animal or vegetable substance, and were therefore liable to seizure for confiscation.

On February 24, 1911, Arbuckle & Co. appeared and filed answer to said libel in which they made no denial of the statements in the libel, but admitted that the said mushrooms were unfit for human food. Accordingly a decree was entered by the court on February 25, 1911, finding said product to consist in whole or in part of a decomposed vegetable substance, and that the United States was entitled to the decree of condemnation as prayed for in the libel. Accordingly on that date a decree was entered, condemning and forfeiting the goods to the United States, and ordering their destruction by the marshal.

Willis L. Moore,
Acting Secretary of Agriculture.

Washington, D. C., *August 3, 1911.*

5876°—No. 1037—11

F. & D. No. 2188.
I. S. No. 7942–c. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1038.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF PRESERVED PEACH, APPLE, AND SUGAR.

At the November term of court, 1910, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the St. Louis Syrup and Preserving Co., a corporation, of St. Louis, Mo., alleging shipment by that company, in violation of the Food and Drugs Act, on or about September 22, 1909, from the State of Missouri into the State of Iowa, of a quantity of so-called "Preserved Peach, Apple and Sugar," which was adulterated and misbranded. The product was labeled: "Preserved Peach Apple and Sugar No preservative No coloring—Gold Seal Brand Preserved Fruits Guaranteed by us to comply with the Food and Drugs Act June 30, 1906. Serial No. 8563. St. Louis Syrup and Preserving Co, St. Louis."

Analysis of the product made by the Bureau of Chemistry of this Department showed it to contain between 23 and 36 per cent commercial glucose. The information, therefore, alleged adulteration of the product in that another substance than peach, apple and sugar, viz, commercial glucose, had been added to and substituted in part for the article described on the label, and that said substance had been mixed and packed with the product so as to reduce and lower and injuriously affect the quality and strength of the article. Misbranding was alleged in the information because the product was labeled and branded "Preserved Peach, Apple and Sugar," which form of branding and labeling is calculated to deceive and mislead the purchaser into the belief that the product consisted wholly of peach, and apple and sugar, whereas, in fact, the product contained a large amount of another and different substance, viz, commercial glucose, which substance was not stated upon the label.

On May 29, 1911, the defendant pleaded guilty and was fined $10 on each count, totalling $20 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 3, 1911.*

5876°—No. 1038—11

F. & D. No. 2114.
I. S. No. 1195–c. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1039.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF "CREME WAFELS."

On May 15, 1911, the United States Attorney for the Northern District of Illinois, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against Reinder De Boer and John H. Dik, doing business as De Boer & Dik, alleging shipment by them, in violation of the Food and Drugs Act, on July 26, 1910, from the State of Illinois into the State of Pennsylvania of "Creme Wafels" which were adulterated. The product was labeled: (On shipping case): "Made in Holland. Stow away from the boilers. Perishable." (On can): "Non Plus ultra IJS Wafels." (Top of can): "Non plus ultra I. J. S. Wafels. Creme Wafels." (On side of can): "Made in Holland. Creme Wafels, 2.25 K. Sole distributors for the U. S. A. De Boer & Dik, Importers, Chicago, Ill."

Analysis by the Bureau of Chemistry of the United States Department of Agriculture showed the product to contain 0.043 per cent of boric acid. Adulteration was, therefore, alleged for the reason that the said product contained an added deleterious ingredient, to wit, boric acid, which rendered such product injurious to health.

On May 19, 1911, the defendants entered a plea of guilty and were fined $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 4, 1911.*

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6392°—No. 1039—11

F. & D. No. 2583.
I. S. No. 10192–c. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1040.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF SPECIAL WILD CHERRY SODA WATER FLAVOR.

On April 25, 1911, the United States Attorney for the District of Massachusetts, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district, against the Blue Seal Supply Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on December 6, 1910, from the State of Massachusetts into the State of Minnesota, of a package containing a product denominated "Special Wild Cherry Soda Water Flavor." The label on the package contained the statement: "Extra concentrated special wild cherry soda water flavor."

Analysis by the Bureau of Chemistry of this Department showed the product to be composed of benzaldehyde and alcohol. Adulteration was alleged in the first count of the information for the reason that an artificial product composed of benzaldehyde and alcohol had been mixed and packed with the article so as to lower, reduce, and injuriously affect its quality and strength, and because an artificial substance, to wit, benzaldehyde and alcohol, had been substituted for the genuine wild cherry flavor which said article purported to contain. Misbranding was alleged in the second count of the information for the reason that the statement on the label, to wit, extra concentrated special wild cherry soda water flavor, was false and misleading in that it conveyed the impression that said product was composed of the genuine extract or flavor of wild cherry, whereas said article was an artificial product composed largely of benzaldehyde and alcohol, and contained no genuine extract or flavor of wild cherry.

On May 1, 1911, the defendant pleaded guilty and was fined $25.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 4, 1911.*

6392°—No. 1040—11

F. & D. No. 2144.
I. S. No. 9598–b.

Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1041.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF PISTACHIO EXTRACT.

In March, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the Western Candy & Bakers Supply Co., a corporation, St. Louis, Mo., charging shipment by them, in violation of the Food and Drugs Act, on or about October 19, 1909, from the State of Missouri into the State of Illinois, of "Extract Pistachio," which was adulterated and misbranded. The label on the bottle was as follows: "Ex. Pistachio Western Candy and Bakers Supply Co. Largest supply house in the West. Importers and manufacturers of essential oils and extracts. 109–11–13 S. 11. St. St. Louis, Mo."

Analysis by the Bureau of Chemistry of this Department showed the following results:

Specific gravity at 15.5°	0.9257
Alcohol, per cent by volume	55.4
Methyl alcohol	Absent.
Solids, gms. per 100 cc	1.22
Ash, gms. per 100 cc	0.04
Alkalinity of ash, cc. N/10 HCl per 100 gms	5.0
Phosphoric acid in ash	Trace.
Potash in ash	Trace.

Oxidation in alkaline solution with hydrogen peroxid yielded benzoic acid.

Coloring matter: Green coal tar; not identified.

Organoleptic tests indicate benzaldehyde and essential oils.

Adulteration was, therefore, charged, in that an artificially flavored and colored substance, not a flavor or extract of pistachio, had been mixed and packed with the product so as to reduce, lower, and injuriously affect its quality and strength, and in that said arti

ficially flavored and colored substance had been substituted wholly or in part for the product; and further, in that an artificially colored and flavored matter had been mixed with said product in a manner whereby its inferiority was concealed. Misbranding was charged, in that the label "Ex. Pistachio" was false and misleading because the product was not a true extract of pistachio, but an artificially flavored and colored preparation, and the label therefore was calculated to deceive and mislead the purchaser.

On April 14, 1911, the defendant pleaded guilty and was fined $10 on each count, and costs, totaling $20 and costs, which was paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 4, 1911.*

1041

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F. & D. No. 2562.
S. No. 905. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1042.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF SUGAR CORN FLAKES.

In March, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed a libel for seizure and condemnation in the District Court of the United States against 175 cases, more or less, of sugar corn flakes, in possession of the Scudders-Gale Grocer Co., a corporation, St. Louis, Mo., alleging that the product had been transported, on or about March 6, 1911, from the State of Michigan into the State of Missouri, and charging misbranding of the product in violation of the Food and Drugs Act. Each of the cases containing the product was labeled "36 Packages Sugar Corn Flakes toasted ready to eat. The Grain Products Co., Battle Creek, Mich." Each of the one hundred and seventy-five cases contained three dozen retail packages, which were labeled as follows: "Sugar Corn Flakes toasted ready to eat. Manufactured by the Grain Products Co. Battle Creek, Mich. Sugar Corn Flakes. Sugar Corn Flakes. Guaranteed under the Food and Drugs Act of June 30, 1906. Serial No. 4808–a. Made of the finest white corn. Another high class food product made by the manufacturers of Grape Sugar Flakes. Marshall Bros., Sales Agents, Detroit, Mich. Toasted ready to eat. The most delicious and healthful product ever made from grain. Tastes good any way you serve it, but should be heated in the oven a few minutes before serving."

Examination by the Bureau of Chemistry of this Department showed the product to consist of field corn flakes; not to contain the sugar present in sugar or sweet corn. Misbranding was, therefore, charged for the reason that the labeling of the cases and the retail packages was false and misleading, in that they were calculated to deceive and mislead the purchaser to believe that said product was

made from sugar corn or sweet corn, when, in fact, it was made from field corn.

On April 8, 1911, after hearing, the court sustained the allegations in the libel and decreed the condemnation and forfeiture to the United States of the product, with the proviso that upon the payment of costs and the execution and delivery of a bond in the sum of $500 by the Scudders-Gale Grocer Co., claimants, in conformity to section 10 of the Food and Drugs Act, the goods seized shall be released and delivered to them.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 5, 1911.*

1042

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F. & D. No. 500.
S. No. 184.

Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1043, FOOD AND DRUGS ACT.

(SUPPLEMENT TO NOTICE OF JUDGMENT NO. 508.)

ADULTERATION OF PRESERVED WHOLE EGGS.

On December 18, 1909, a decree was entered in the District Court of the United States for the Southern District of Illinois, confiscating 50 cans, more or less, of preserved whole eggs, for the reason that the eggs were found to be adulterated, because they contained an added deleterious ingredient, to wit, boric acid, which might render them injurious to health, and assessing the costs of the suit against the Hipolite Egg Company, claimant therein. The facts of the case are set out fully in Notice of Judgment No. 508. From this decision, the Hipolite Egg Company appealed to the Supreme Court of the United States, on the question of whether the trial court had jurisdiction in rem over the eggs, and whether said District Court had jurisdiction to render and enter a decree for costs against the claimant.

On March 13, 1911, the decree of the trial court was affirmed. The opinion of the Supreme Court follows:

Mr. Justice McKenna delivered the opinion of the Court.

The case is here on a question of jurisdiction certified by the District Court.

On March 11, 1909, the United States instituted libel proceedings under section 10 of the act of Congress of June 30, 1906, (34 Stat. L. 768,) against fifty cans of preserved whole eggs, which had been prepared by the Hipolite Egg Company of St. Louis, Missouri.

The eggs, before the shipment alleged in the libel, were stored in a warehouse in St. Louis for about five months, during which time they were the property of Thomas & Clark, an Illinois corporation engaged in the bakery business at Peoria, Ill.

Thomas & Clark procured the shipment of the eggs to themselves at Peoria, and upon the receipt of them placed the shipment in their storeroom in their bakery factory along with other bakery supplies. The eggs were intended for

baking purposes, and were not intended for sale in the original, unbroken packages or otherwise, and were not so sold. The Hipolite Egg Company appeared as claimant of the eggs, intervened, filed an answer, and defended the case, but did not enter into a stipulation to pay costs.

Upon the close of libellant's evidence, and again at the close of the case, counsel for the Egg Company moved the court to dismiss the libel on the ground that it appeared from the evidence that the court, as a Federal court, had no jurisdiction to proceed against or confiscate the eggs, because they were not shipped in interstate commerce for sale within the meaning of section 10 of the food and drugs act, and for the further reason that the evidence showed that the shipment had passed out of interstate commerce before the seizure of the eggs, because it appeared that they had been delivered to Thomas & Clark and were not intended to be sold by them in the original packages or otherwise.

The motions were overruled and the court proceeded to hear and determine the cause and entered a decree finding the eggs adulterated, and confiscating them. Costs were assessed against the Egg Company.

The decree was excepted to on the ground that the court was without jurisdiction *in rem* over the subject matter, and on the further ground that the court was without jurisdiction to enter judgment *in personam* against the Egg Company for costs.

The jurisdiction of the District Court being challenged, the case comes here directly.

Section 2 of the food and drugs act prohibits the introduction into any State or Territory from any other State or Territory of any article of food or drugs which is adulterated, and makes it a misdemeanor for any person to ship or deliver for shipment such adulterated article, or who shall receive such shipment, or, having received it, shall deliver it in original unbroken packages for pay or otherwise.

In giving a remedy section 10 provides that if "any article of food that is adulterated and is being transported from one State . . . to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, . . . shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for confiscation by a process of libel for condemnation . . . The proceeding of such libel cases shall conform, as near as may be, to the proceedings in admiralty . . . and all such proceedings shall be at the suit of and in the name of the United States."

The shipment to Thomas & Clark consisted of 130 separate cans, each can corked and sealed with wax. The eggs were intended to be used for baking purposes. The only can sold was that sold to the inspector for the purpose of having the eggs analyzed. They contained approximately two per cent of boric acid, which the court found was a deleterious ingredient, and adjudged that they were adulterated within the meaning of the food and drugs act of June 30, 1906, (34 Stat. L. 771.)

The Egg Company, whilst not contending that the shipment of the eggs was not a violation of section 2 of the act, and a misdemeanor within its terms, and not denying the power of Congress to enact it, presents three contentions: (1) Section 10 of the food and drugs act does not apply to an article of food which has not been shipped for sale, but which has been shipped solely for use as raw material in the manufacture of some other product. (2) A United States District Court has no jurisdiction to proceed *in rem* under section 10 against goods that have passed out of interstate commerce before the proceeding *in rem* was

commenced. (3) The court had no jurisdiction to enter a personal judgment against the Egg Company for costs.

It may be said at the outset of these contentions that they insist that the remedies provided by the statute are not coextensive with its prohibitions, and hence that it has virtually defined the wrong and provided no adequate means of punishing the wrong when committed. Premising this much, we proceed to their consideration in the order in which they have been presented. The following cases are cited to sustain the first contention: *United States* v. *Sixty-five Casks of Liquid Extracts*, 170 Fed., affirmed by the Circuit Court of Appeals in *United States* v. *Knowlton Danderine Company*, 175 Fed. 1022, and *United States* v. *Forty-six Packages and Boxes of Sugar*, in the District Court for the Southern District of Ohio, not yet reported.

The articles involved in the first case were charged with having been misbranded and consisted of drugs in casks, which were shipped from Detroit, Michigan, to Wheeling, West Virginia, there to be received by the Knowlton Danderine Company in bulk in carload lots and manufactured into danderine, of which no sale was to be made until the casks should be emptied and the contents placed in properly marked bottles.

It was contended that the articles, not having been shipped in the casks for the purpose of sale thus in bulk, but shipped to the owner from one State to another for the purpose of being bottled into small packages suitable for sale, and when so bottled to be labeled in compliance with the requirements of the act, were not transported for sale, and were therefore not subject to libel under section 10 of the act.

The contention submitted to the court the construction of the statute. The court, however, based its decision upon the want of power in Congress to prohibit one from manufacturing a product in a State and removing it to another State "for the purpose of personal use and not sale, or for use in connection with the manufacture of other articles, to be legally branded when so manufactured;" and concluded independently, or as construing the statute, that the danderine company, being the owner of the property, shipped it to itself and did not come within any of the prohibitions of the statute. The case was affirmed by the Circuit Court of Appeals, 175 Fed. 1022. The court, however, expressed no opinion as to the power of Congress. It decided that the facts did not exhibit a case within the purpose of the statute, saying: "No attempt to evade the law, either directly or indirectly or by subterfuges, has been shown, it appearing that the manufacturer had simply transferred from one point to another the product he was manufacturing for the purpose of completing the preparation of the same for the market. Under the circumstances disclosed in this case, having in mind the object of the Congress in enacting the law involved, we do not think the liquid extracts proceeded against should be forfeited. In reaching this conclusion we do not find it necessary to consider other questions discussed by counsel and referred to in the opinion of the court."

In *United States* v. *Forty-six Packages and Boxes of Sugar* the court construed the statute as applying only to transportation for the purpose of sale. To explain its view the court said: "Following the words 'having been transported' is an ellipse, an omission of words necessary to the complete construction of the sentence. These words are found in the preceding part of the section and, when supplied, the clause under which this libel is filed reads and means, 'any article of food, drug or liquor that is adulterated or misbranded within the meaning of this act, having been transported from one State to another *for sale* [italics ours], remains unloaded, unsold, or in original, unbroken packages, . . . shall be liable,'" etc. And the court was of

opinion that this view was in accord with the other two cases which we have cited. This may be disputed. It may well be considered that there is no analogy between an article in the hands of its owner or moved from one place to another by him, to be used in the manufacture of articles subject to the statute and to be branded in compliance with it, and an adulterated article *itself* the subject of sale and intended to be used as adulterated in contravention of the purpose of the statute.

A legal analogy might be insisted upon if cakes and cookies, which are the compounds of eggs and flour which the record presents, could be branded to apprise of their ingredients like compounds of alcohol. The object of the law is to keep adulterated articles out of the channels of interstate commerce, or, if they enter such commerce, to condemn them while being transported or when they have reached their destination, provided they remain unloaded, unsold or in original unbroken packages. These situations are clearly separate, and we cannot unite or qualify them by the purpose of the owner to be a sale. It, indeed, may be asked in what manner a sale? The question suggests that we might accept the condition, and yet the instances of this record be within the statute. All articles, compound or single, not intended for consumption by the producer, are designed for sale, and, because they are, it is the concern of the law to have them pure.

It is, however, insisted that "the proceeding *in personam* authorized by the law was intended to, and no doubt is, capable of giving full force and effect to the law"; and, further, that a producer in a State is not interested in an article shipped from another State which is not intended to be sold or offered for consumption until it is manufactured into something else. The argument is peculiar. It is certainly to the interest of a producer or consumer that the article which he receives, no matter whence it come, shall be pure, and the law seeks to secure that interest, not only through personal penalties but through the condemnation of the article if impure. There is nothing inconsistent in the remedies, nor are they dependent. *The Three Friends*, 166 U. S. 1, 49.

The first contention of the Egg Company is, therefore, untenable.

2. Under this contention it is said that "the jurisdiction of the food and drugs act in question can go no farther than the power given to Congress under which it was enacted," and that the District Court, therefore, "had no jurisdiction *in rem* because at the time of the seizure the eggs had passed into the general mass of property in the State and out of the field covered by interstate commerce."

To support the contention, *Waring* v. *The Mayor*, 8 Wall. 110, is cited. That case involved the legality of a tax imposed by an ordinance of the city of Mobile upon merchants and traders of the city equal to one-half of one per cent on the gross amount of their sales, whether the merchandise was sold at public or private sale. Waring was fined for non-payment of the tax, and he brought suit to restrain the collection of the fine, alleging that he was exempt from the tax on the ground that the sales made by him were of merchandise in the original packages, as imported from a foreign country, and which was purchased by him, in entire cargoes, of the consignees of the importing vessels before their arrival, or while the vessels were in the lower harbor of the port. He obtained a decree in the trial court which was reversed by the Supreme Court of the State of Alabama. A writ of error was sued out from this court and the decree was affirmed, on the ground that Waring was not the shipper or consignee of the imported merchandise, nor the first vendor of it, and it was the settled law of the court "that merchandise in the original packages once sold

by the importer is taxable as other property," citing *Brown* v. *Maryland*, 12 Wheat. 443; *Almy* v. *California*, 24 How. 173; *Pervear* v. *Commonwealth*, 5 Wall. 479. This also was said:

When the importer sells the imported articles, or otherwise mixes them with the general property of the State by breaking up the packages, the state of things changes, as was said by this court in the leading case, as the tax then finds the articles already incorporated with the mass of property by the act of the importer. Importers selling the imported articles are shielded from any such State tax, but the privilege of exemption is not extended to the purchaser, as the merchandise, by the sale and delivery, loses its distinctive character as an import.

This case is clear as far as it goes, but the facts are not the same as those in the case at bar.

In the case at bar there was no sale of the articles after they were committed to interstate commerce, nor were the original packages broken. Indeed, it might be insisted that we need go no farther than that case for the rule of decision in this. It affirms the doctrine of original packages which was expressed and illustrated in previous cases and has been expressed and illustrated in subsequent ones. It is too firmly fixed to need or even to justify further discussion, and we shall not stop to affirm or deny its application to the special contention of the Egg Company. We prefer to decide the case on another ground which is sustained by well-known principles.

The statute declares that it is one "for preventing . . . the transportation of adulterated . . . foods . . . and for regulating traffic therein;" and, as we have seen, section 2 makes the shipper of them criminal and section 10 subjects them to confiscation, and, in some cases, to destruction, so careful is the statute to prevent a defeat of its purpose. In other words, transportation in interstate commerce is forbidden to them, and, in a sense, they are made culpable as well as their shipper. It is clearly the purpose of the statute that they shall not be stealthily put into interstate commerce and be stealthily taken out again upon arriving at their destination and be given asylum in the mass of property of the State. Certainly not, when they are yet in the condition in which they were transported to the State, or, to use the words of the statute, while they remain "in the original, unbroken packages." In that condition they carry their own identification as contraband of law. Whether they might be pursued beyond the original package we are not called upon to say. That far the statute pursues them, and, we think, legally pursues them, and to demonstrate this but little discussion is necessary.

The statute rests, of course, upon the power of Congress to regulate interstate commerce, and, defining that power, we have said that no trade can be carried on between the States to which it does not extend, and have further said that it is complete in itself, subject to no limitations except those found in the Constitution. We are dealing, it must be remembered, with illicit articles, articles which the law seeks to keep out of commerce, because they are debased by adulteration, and which punishes them (if we may so express ourselves) and the shipper of them. There is no denial that such is the purpose of the law, and the only limitation of the power to execute such purpose which is urged is that the articles must be apprehended in transit or before they have become a part of the general mass of property of the State. In other words, the contention attempts to apply to articles of illegitimate commerce the rule which marks the line between the exercise of Federal power and state power over articles of legitimate commerce. The contention misses the question in the case. There is here no conflict of national and state jurisdictions over property

legally articles of trade. The question here is whether articles which are outlaws of commerce may be seized wherever found, and it certainly will not be contended that they are outside of the jurisdiction of the National Government when they are within the borders of a State. The question in the case, therefore, is, What power has Congress over such articles? Can they escape the consequences of their illegal transportation by being mingled at the place of destination with other property? To give them such immunity would defeat, in many cases, the provision for their confiscation, and their confiscation or destruction is the especial concern of the law. The power to do so is certainly appropriate to the right to bar them from interstate commerce, and completes its purpose, which is not to prevent merely the physical movement of adulterated articles, but the use of them, or rather to prevent trade in them between the States by denying to them the facilities of interstate commerce. And appropriate means to that end, which we have seen is legitimate, are the seizure and condemnation of the articles at their point of destination in the original, unbroken packages. The selection of such means is certainly within that breadth of discretion which we have said Congress possesses in the execution of the powers conferred upon it by the Constitution. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Lottery Case*, 188 U. S. 321, 355.

3. Had the court jurisdiction to adjudge costs against the Egg Company? This is contended, and in support of the contention the claimant assimilates this proceeding to one in admiralty. In consequence, it may be supposed of the provisions of section 10 of the food and drugs act that the proceedings "shall conform, as near as may be, to the proceedings in admiralty," and *The Monte A*, 12 Fed. 331, and *The Alida*, Id. 343, are cited as deciding that in a proceeding *in rem* the court has no jurisdiction to assess the costs *in personam* against the claimant, who simply files an answer, but who does not enter into a stipulation to pay the costs of the proceeding. Too broad a deduction is made from these cases. They undoubtedly decide that a process *in rem* and *in personam* cannot be joined in admiralty in the same libel, but it was not held that this was because of a want of jurisdictional power in the court. Such view was disclaimed in *The Monte A*, and to show that the framing of a libel against the owner *in personam* and against the vessel *in rem* was not jurisdictional, the court said that a breach of a contract of affreightment could have been so framed "long before the adoption of the Supreme Court rules in admiralty."

It is stated in Benedict's Admiralty, section 204, that "the distinction between proceedings *in rem* and *in personam* has no proper relation to the question of jurisdiction." It may be, as stated in section 359 of the same work, that "in a suit *in rem*, unless some one intervenes, the power and process of the court is confined to the thing itself and does not reach either the person or property of the owner." If, however, the owner comes in, or an intervenor does, his appearance is voluntary. He becomes an actor and subjects himself to costs, and this even if his ownership be averred in the libel. Waple Proceedings In Rem., page 100 *et seq.* 73; *United States* v. *422 Casks of Wine*, 1 Pet. 547.

And such seems to be the necessary effect of Admiralty Rules 26 and 34. It is provided (Rule 34) that if a third person intervene, for his own interest, he is required to give a stipulation with sureties to abide the final decree rendered in the original or appellate court. It is in effect conceded that if such a stipulation be given, a judgment for costs can be rendered. But, upon what theory? The concession confounds the relation between the stipulation and the judgment, and makes the security for the payment of the judgment the source of jurisdic-

tion to render it—jurisdiction according to the contention, which the court does not have as a Federal court.

Even, therefore, upon the supposition that the principles of the admiralty law are to apply to the proceedings under section 10, we think the court had jurisdiction to render a judgment for costs against the Egg Company.

So far our discussion has been in deference to the contention of the Egg Company, but it is disputable if the certificate presents a question of jurisdiction as to costs. The District Court gets its jurisdiction of the cause from section 10 of the food and drugs act, and whether the libel may be *in rem* and *in personam*, or whether a personal judgment for costs can be rendered, may be said to be simply a question of the construction of the section, and not one which involves the jurisdiction of the court. In other words, the rulings of the court may be error only, not in excess of its power. It certainly had jurisdiction of the person of the Egg Company.

Decree affirmed.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 21, 1911.*

1043

O

F. & D. No. 1188.
S. No. 412.
Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1044.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO CATSUP.

On January 19, 1910, the United States Attorney for the Southern District of Ohio, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 275 cases of tomato catsup in the possession of A. Janszen & Co., Cincinnati, Ohio.

Examination of three samples of this product by the Bureau of Chemistry of the United States Department of Agriculture showed the first to contain yeast and mold spores 79 per one-sixtieth cmm., bacteria estimated at 24,000,000 per cc., with mold tissue in about two-thirds of the microscopic fields; the second yeast and mold spores 80 per one-sixtieth cmm., bacteria estimated at 70,000,000 per cc., with mold tissue in about two-thirds of the microscopic fields; and the third yeast and mold spores 110 per one-sixtieth cmm., bacteria estimated at 30,000,000 per cc., with mold tissue in about two-thirds of the microscopic fields. The libel alleged that the catsup had been shipped from the State of Indiana into the State of Ohio, and was adulterated in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure and confiscation. Adulteration was charged on the ground that the product consisted wholly or in part of a filthy, decomposed, and putrid vegetable substance.

On May 12, 1910, George Spraul Packing Co. filed an answer, stating that they were owners of the catsup, admitting the interstate shipment, but denying that the product was filthy, decomposed, and putrid. The case came on for hearing, and a jury trial was had, resulting in a verdict in favor of said claimants. Following this verdict the United States Attorney moved for a new trial, which was granted. The opinion of the court follows:

A libel was filed by the District Attorney in the name of the United States, against two hundred and seventy-five cases, more or less, of tomato catsup shipped from Indiana into this State, charging that the catsup was "adulterated

in violation of the Act of Congress of June 30th, 1906, known as the Food and Drugs Act, and liable to seizure and condemnation as provided therein, for the reason that each and every bottle and jug in the two hundred and seventy-five, more or less, cases, contains an article of food and food product consisting wholly or in part of a filthy, decomposed and putrid vegetable substance and is unfit for food."

The case was tried and the jury returned a verdict in favor of the catsup and against the Government.

Among the grounds for a new trial these are noticed.

1. The court erred in charging the jury that although they be satisfied that the catsup consisted wholly or in part of a filthy, decomposed or putrid vegetable substance, yet, that would not be sufficient to warrant the jury in bringing in a verdict for the Government, unless they found that the catsup was unfit for food.

2. The court erred in stating to the jury that it could not be said from the testimony where a point is reached when the amount of the bacteria or germs is so great as to bring about decomposition or filthiness or a condition of putridity.

3. The verdict was contrary to the weight of the evidence.

The Pure Food Act of June 30th, 1906, U. S. Compiled Statutes Sup. 1907, p. 928, provides, section 2, that the introduction into any state * * * from any other state * * * any article of food * * * which is adulterated * * * within the meaning of this Act is prohibited, and the person shipping the same shall be guilty of a misdemeanor, and under section 10, such adulterated food may be seized, following the procedure as nearly as may be, in admiralty giving the right to either party to have questions of fact tried by a jury.

It is provided, section 7,—" That for the purposes of this Act an article shall be deemed to be adulterated," " in cases of food," " sixth, if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

Section 3 provides, that the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act including the collection and examination of specimens of food shipped from one state into another, etc., in unbroken packages.

Section 4 provides, that the examination of specimens of food, etc., shall be made in the Bureau of Chemistry of the Department of Agriculture or under its direction for the purpose of determining from such examinations whether the food is adulterated within the meaning of the Act.

Section 6 defines the word " food " which shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed or compound.

Under the authority of the Act of March 3, 1903, 32 Statutes at Large, 1158, the standards of purity for food products which have been established " vegetables are the succulent, clean, sound, edible parts of herbaceous plants used for culinary purposes."

" Catchup (ketchup, catsup) is the clean, sound, product made from the properly prepared pulp of clean, sound, fresh, ripe, tomatoes, with spices and with or without sugar and vinegar." Greeley, " Food and Drugs Act " p. 147.

The libel having charged that this catsup was " unfit for food," and no objection being made to the inclusion of these words by the defense, and upon the

District Attorney's statement that the Department of Agriculture directed their inclusion, the court, while expressing doubt, nevertheless concluded to hold the Government to its charge and directed the jury in the way set forth above, and of which the Government now complains.

Upon further consideration and examination of the Pure Food Laws at length, the court is of opinion that the test of adulteration in this case is not to be determined by the answer to the question whether the article complained of is or is not fit for food.

Section 6 covers a number of different offenses. One is, if the food product consists in whole or in part of a filthy, decomposed, or putrid animal substance. Another is if it consists in whole or in part of any portion of an animal unfit for food, or again, if it is the product of a diseased animal, and again if it is one that has died otherwise than by slaughter. The article is adulterated if it consists in whole or in part of a filthy, decomposed, or putrid substance.

This is not a criminal prosecution, and the language in the libel "unfit for food" may be regarded as surplusage because the other language in it completely and distinctly describes an offense. Even in an indictment such superfluous language is not fatal. Anderson v. United States, 170 U. S. 481.

The question for the jury to determine was whether this tomato catsup was in whole or in part filthy, decomposed or putrid. Counsel for the defense claims that without the allegations that the catsup was unfit for food the law could not stand because not a reasonable exercise of police power. Not so. The power of Congress to regulate interstate commerce is involved, not police power. Strictly speaking Congress has no police power. Keller v. United States, 213 U. S. 138. The motion on the first ground is sustained.

The testimony of the Government chemists, unrefuted, shows that this catsup contained eighty to one hundred millions of bacteria to the teaspoonful, and yeast germs and mould spores in proportion. Home-made catsup and catsup made at factories with similar care, and choice of material, contain very few. There was evidence that when catsup contains over thirty-seven millions, decay becomes apparent to the taste and smell. The evidence is conclusive that the taste and smell may be overcome by spices and vinegar. This particular catsup was a medium spiced catsup, but sufficiently spiced to overcome the taste and smell, although there was to the taste a flatness which indicated the existence of a change to a spoiled condition. The court misapprehended the testimony when the jury were charged that it did not appear from the testimony where the point is reached when the amount of the bacteria or germs is so great as to bring about decomposition, filthiness or a condition of putridity. The motion on the second ground is well taken.

There was no evidence that the catsup contained anything poisonous or deleterious, and the jury were charged that that was not the test. Although the question of fitness or unfitness of food was also not the proper test, yet, the court is of opinion that catsup such as this is not fit for food, and was surprised at the verdict of the jury. No doubt all food products have in them bacteria and most of them yeast germs and mould spores, and it is the action of these which eventually bring about decomposition, and a point is reached when the article becomes rotten, and if rotten, it is certainly not fit for food although it may be that it is not poisonous or deleterious in the sense that some of it taken into the system does not appear injurious on the ancient theory that every man in his lifetime may safely eat a "peck of dirt." It is not strange that the condition of this catsup was, as one of the chemists said, startling. It was made in this way: tomatoes in large quantities were dumped out of wagons on a platform at the factory. Some attempt was made at separating the rotten tomatoes from the mass; the tomatoes were carried in large quantities by boys

into the factory and there placed in wire wicker baskets and immersed in hot water for a short time. The baskets were then placed in front of women or girls, who with knives peeled them and took out the cores. The fine ripe tomatoes were canned and that was the primary purpose of the operation. The cores, the skins, the wormeaten and insect bitten tomatoes, the partly green, and some decayed tomatoes, were thrown into a trough which from time to time was scraped out by boys. This refuse was put into the pulping machine and subjected to heat. The pulp was made in the summer time and there were more or less decayed tomatoes in the vicinity of the factory and opportunity for flies to carry germs. There were no screens. Reasonable efforts were made to keep the place clean by scrubbing it carefully twice a week. There was testimony tending to show that some whole tomatoes were put in the pulping machine. It does not appear how many and what proportion but the probabilities are that very few whole, ripe, first class tomatoes went into the pulping machine. From the pulping machine the pulp was put into old whiskey barrels of some two hundred gallons capacity and were stored in the cellar and most of the catsup made in the fall and winter following. Some of the barrels exploded because, as is said, they were not air tight, but it was the contents of only those that exploded that were rejected in making the catsup. Apparently the spices and benzoate of soda were added when the time came to actually take the pulp from the barrels to make the catsup, although the maker said that he put up some twenty casks as an experiment and did not use benzoate of soda. This experiment failed, for the catsup spoiled.

The court is of opinion that the verdict was contrary to the weight of the evidence even on the theory that the proof must establish that the catsup was unfit for food.

The motion for a new trial is granted.

HOLLISTER, J.
Filed July 12, 1910.

Thereupon the claimants withdrew their answer, by leave of court, and filed a demurrer to the libel on the ground that no seizure of the catsup had been made prior to the filing of the libel by the United States Attorney, which demurrer the court sustained, and ordered that the libel be dismissed. From this decision the United States sued out a writ of error to the Court of Appeals for the Sixth Circuit. On March 7, 1911, the decision of the lower court was reversed.

The opinion of the Circuit Court of Appeals is as follows:

KNAPPEN, Circuit Judge, delivered the opinion of the Court.

The United States filed this libel in the United States District Court for the Southern District of Ohio under the Food and Drugs Act of June 30, 1906 (34 Stats., 768), for the seizure and condemnation of the articles named in the above title.

Section 10 of the act referred to provides "that any article of food, drug or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one state, territory, district, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia, or the Territories, or insular possessions of the United States, or if it be imported from a foreign country for sale, or if it is intended for export to a foreign country, shall be liable to be proceeded against in any district

court of the United States within the District where the same is found, and seized for confiscation by a process of libel for condemnation. * * * The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury on any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States." The section in question contains provisions for the destruction or sale of the articles if condemned, as adulterated or misbranded, as well as for the return of the same to the owner thereof upon the payment of the costs of the proceedings, and the giving of a bond that the articles shall not be sold or disposed of contrary to the provisions of the act, or the laws of any state, territory, district or insular possession.

The libel in question, referring to the articles of food as "contained in original unbroken packages," alleges that the said packages were transported in interstate commerce, that the same were illegally held within the jurisdiction of the court, and that the articles of food contained therein are adulterated in violation of the act referred to "and liable to seizure and condemnation as provided therein, for the reason that each and every bottle and jug in said two hundred and seventy-five, more or less, cases, contains an article of food and food product consisting wholly or in part of a filthy, decomposed and putrid vegetable substance and is unfit for food." It prayed "the process of attachment in due form of Law, according to the course of this Court in cases of admiralty and maritime jurisdiction, so far as is applicable to this case."

An attachment was issued to the marshal, commanding the seizure of the property, and notice to claimants. The marshal returned that he had seized the articles mentioned and held the same in his custody subject to the further order of the Court. The claimants named in the title appeared and demurred "for the reason that it does not appear from an inspection of said libel that the catsup described therein had, prior to the filing of said libel and the issuance and service of process in this case, been seized in any way by any officer of the United States." The libel contains no allegation of previous seizure. The court made an order sustaining the demurrer and dismissing the libel. The United States excepted to this order, and brings this writ of error to review the same.

The sole question presented here is whether previous executive seizure of the goods is necessary to give the court jurisdiction of the libel, as was held by the District Judge in an able and elaborate opinion.

In the case of The Brig Ann, 9 Cranch, 289, which was a case of an information against certain merchandise alleged to have been imported contrary to the non-importation act of March 1, 1809, it was held that the Court had no jurisdiction over the condemnation proceedings until after executive seizure. The statute which was involved in that case expressly provided for seizure by the collector and declared a forfeiture of the offending articles. 2 Stat. at L. 528. Mr. Justice Story based the necessity of previous executive seizure upon the judiciary act of September 24, 1789 (c. 20, sec. 9), which conferred upon the district courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters navigable from the sea by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas." The learned justice interpreted this section of the judiciary act as conferring jurisdiction over the condemnation proceedings upon the district courts only of the district in which the seizure was made, saying that "before judicial cognizance can attach upon a forfeiture in rem, under the statute, there must be a seizure; for until seizure, it is impossible to ascertain what is the competent forum." In a

large number of cases since the decision in the case of The Brig Ann it has been held that in proceedings in rem for forfeiture and confiscation previous executive seizure is necessary to jurisdiction, although there are cases not in harmony with this view. Among the cases in which such previous executive seizure has been held necessary to jurisdiction are the following: Gelston v. Hoyt, 3 Wheat. 245; The Silver Spring, Fed. Cas. No. 12,858; The Washington, Fed. Cas. No. 17222; The Fideliter, Fed. Cas. No. 4,755; The Tug May, 6 Bissell, 243; The Idaho, 29 Fed. 187, 191; The Josefa Segunda, 10 Wheat. 312; Dobbin's Distillery v. United States, 96 U. S. 395; United States v. Larkin (C. C. A. 6) 153 Fed. 113. The rule has also been extended to proceedings under laws providing for seizure and confiscation of "the property of rebels." Pelham v. Rose, 76 U. S., 103; The Confiscation Cases, 87 U. S. 92; United States v. Winchester, 99 U. S. 372. In all or nearly all of the cases above cited there is found either express statutory authority for the seizure, or express statutory declaration that the property shall be, or becomes, forfeited to the United States by reason of the acts complained of, and in some cases both such statutory authority and statutory declaration are found. The Statute involved in the case of The Silver Spring expressly provided for a forfeiture of the boat "if found within the district", although not for an executive seizure; 3 Stat. at L. c. 35, Sec. 6. In the statute involved in Gelston v. Hoyt express provision was made for seizure by the revenue officer whenever it should appear that a breach of the laws of the United States had been committed whereby the ship or the goods on board might become liable to forfeiture. The act relating to navigation of steam vessels (Rev. Stat. Sec. 4499), as construed by District Judge Deady in the case of The Idaho, expressly authorizes a seizure by the proper officer of the government in advance of judicial proceeding. The Josefa Segunda involved a statute providing that the property subject to confiscation was liable to be "seized, prosecuted and condemned, in the district where the said ship or vessel may be found or seized." Dobbin's Distillery v. United States arose under an internal revenue act which expressly provided for forfeiture. 15 Stat. c. 186. The Statute involved in United States v. Larkin arose under Revised Statutes, section 3072, which makes it "the duty of the several officers of the customs to seize and secure any vessel or merchandise which shall become liable to seizure by virtue of any law respecting the revenue." In the act for the seizing and confiscating of property of rebels express provision is made for executive seizure. (See Pelham v. Rose, The Confiscation Cases, and United States v. Winchester.)

The present judiciary act (Rev. Stat. Sec. 563, sub-div. 8) gives the district courts jurisdiction "of all civil causes of admiralty and maritime jurisdiction * * * and of all seizures on land and on waters not within admiralty and maritime jurisdiction", the subdivision mentioned thus omitting the provision found in the section of the judiciary act of 1789 to which we have referred, as to seizures "within their respective districts", and including cases of "seizures on land and on waters not within admiralty and maritime jurisdiction." In cases of seizures on land, however, the district court proceeds not as a court of admiralty, but as a court of common law upon a trial by jury. The Sarah, 8 Wheat. 390; United States v. Winchester, 99 U. S. supra. In Dobbin's Distillery v. United States, Mr. Justice Clifford said: "Judicial proceedings in rem, to enforce a forfeiture, cannot in general be properly instituted until the property inculpated is previously seized by executive authority, as it is the preliminary seizure of the property that brings the same within the reach of such legal process. The Schooner Anne, 9 Cranch, 289." In the Dobbin's case due executive seizure had in fact been made for breach of the internal revenue laws and the above statement was clearly obiter.

Assuming for the purposes of this opinion that, in navigation, customs and revenue cases, the right of executive seizure for violation of the statute exists, even without express statutory provision therefor, and that in such cases such seizure must precede judicial action for condemnation, the real and decisive question before us is simply what was the intention of Congress in this regard as expressed in the food and drugs act. It is noticeable that the act nowhere declares the goods ipso facto forfeited by an infraction of the act. On the contrary, express provision is made for the redelivery of the goods to the owner by order of the Court, upon the payment of the costs and the giving of bond, even in cases where they are found to offend against the act. The act provides that the Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce and Labor, "shall make uniform rules and regulations for carrying out the provisions of this act, including the collection and examination of specimens of foods and drugs manufactured or offered for sale * * * or which may be submitted for examination by the chief health, food or drug officers of any state, territory, or the District of Columbia * * *"; that the examination of such specimens shall be made in, or under the direction and supervision of, the Bureau of Chemistry of the Department of Agriculture, for the purpose of determining whether such articles are adulterated or misbranded; and in case such adulteration or misbranding appears, for the giving of notice by the Secretary of Agriculture "to the party from whom such sample was obtained", with opportunity to be heard. The act nowhere provides for executive seizure of property offending against the act. On the contrary, the only duty enjoined upon the Secretary of Agriculture (and upon him only), in case it shall appear to him that any of the provisions of the act have been violated, is to "at once certify the facts to the proper United States District Attorney." (Sec. 4.) Not only is the District Attorney given no power of seizure, but section 5 of the act expressly makes it his duty, on receiving from the Secretary of Agriculture (or certain other officers) report of a violation of the act, "to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided", thus suggesting by implication the exclusion of right of executive seizure. Nor has the marshal implied power to make executive seizures under the act. He is not by statute charged with the enforcement of the act, as are revenue and customs officers with respect to laws relating to those subjects.

We are not concerned with the question whether the proceedings and notice provided by Sections 3, 4, and 5 of the act are necessary prerequisites to action by the district attorney, nor whether they apply to a proceeding under section 10 of the act. (See United States v. 50 Barrels of Whiskey, 165 Fed. 966; United States v. 65 Casks of Liquid Extracts, 170 Fed. 449.) We call attention to these provisions because they are the only ones expressly relating to proceedings for the enforcement of the penalties provided by the act, as distinguished from criminal prosecutions. The considerations to which we have adverted seem to us to repel rather than sustain, an inference that an executive seizure is necessary, or even contemplated, previous to judicial proceedings in condemnation. In the case of a law of this character while it would not be unnatural to provide for an executive seizure, and while such power of seizure would seem of advantage in the enforcement of the act, on the other hand, if authority to make such seizure was intended, it would be the natural course to expressly so declare. There is no express declaration to that effect, and none by implication, unless contained in the clause of section 10 providing that the offending articles "shall be liable to be proceeded against in any district court of the United States within the district where the same is found, and seized for

confiscation by a process of libel for condemnation", or in the provision that "The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty * * *". It is clear that, as the former clause is punctuated, there is no necessary implication of previous executive seizure. According to the punctuation, the seizure for confiscation would seem to be "by a process of libel"; and although such punctuation is by no means conclusive, and should not be controlling as against the intent of the act as otherwise shown, it is entitled to consideration.

It is urged that the clause "the proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty" refers to the practice under Admiralty Rule 22, which provides that "the information and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure * * * and the district within which the property is brought and where it then is". But while this rule recognizes the practice of informations and libels upon seizures, it is not declaratory of the necessity of such previous executive seizure. There is, in our opinion, nothing in the reference to "proceedings in admiralty" contained in section 10 of the food and drugs act which adopts rule 22 rather than rule 23, which latter rule applies to "all libels in instance cases, civil or maritime," and which provides that the libel shall state "if the libel be in rem, that the property is within the district." Under rule 23, jurisdiction is obtained by the presence of the property within the district (Henry on Admiralty, sec. 127, 132; The Rio Grande, 23 Wall. 458), and the Court acquires its jurisdiction over the libel by its filing, and over the res by seizure of the same under a process issued after the libel is filed. The Queen of the Pacific, 61 Fed. 213; Pacific Coast S. S. Co. v. Bancroft-Whitney Co. (C. C. C. A. 9) 94 Fed. 180.

The proceeding before us was not in admiralty. The food and drugs act merely provides for conformity of all proceedings for confiscation thereunder "as near as may be, to the proceedings in admiralty." Previous executive seizure is no part of admiralty proceedings. The language in question, to our minds, falls far short of declaring by necessary implication that a condition precedent to jurisdiction in case of forfeitures under the laws relating to impost, navigation or trade, viz: an executive seizure, is necessary to jurisdiction over judicial proceedings in confiscation under the food and drugs act. Nor is there anything in the language of the present judiciary act which limits jurisdiction over condemnation proceedings in rem to the district where the property has been previously seized.

Taking into account the nature of the act, and the various considerations to which we have referred, as well as the embarrassment which might well result from an executive seizure whose validity must depend not only upon the determination by the Court of the question of fact of misbranding or adulteration, but also upon the existence of the other facts necessary to bring the articles under the federal statutes, we are of opinion that the act should not be construed as making a previous executive seizure necessary to the jurisdiction of the court over proceedings for confiscation. We are the better content with this conclusion from the fact that it has been the general, if not the universal practice, under this act, for seizures to be made on warrant issued after the filing of the libel.

In our opinion the order sustaining the demurrer should be reversed.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 5, 1911.*

1044

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F. & D. No. 1321.
S. No. 476.
Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1045.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF GRAPE JUICE.

On March 15, 1910, the United States Attorney for the Western District of New York, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 74 cases of grape juice which had been shipped from the State of Pennsylvania into the State of New York.

Examination of samples from said consignment by the Bureau of Chemistry of the United States Department of Agriculture showed the product to be short in weight and measure, below the standard of grape juice, and to contain 5 per cent of glucose. The libel alleged that the grape juice after transportation from the State of Pennsylvania into the State of New York remained in the original unbroken packages and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Adulteration was alleged because glucose had been substituted in part for the grape juice. Misbranding was alleged because the product was labeled and branded so as to deceive and mislead the purchaser in that it bore the statement "The brand that raised the standard", whereas in truth and in fact it was not pure grape juice, and further because a number of the bottles were found to be short in measure and the remainder short in weight.

To the above libel a joint demurrer was interposed by the Grape Products Co., Inc., W. H. Granger & Co., Plimpton, Cowan & Co. and S. M. Flickinger Co., Inc., claimants of the product, on the ground that the libel failed to allege that notice of the examination of the samples by the Bureau of Chemistry, United States Department

of Agriculture, was given to the claimants and an opportunity to be heard afforded them.

On July 15, 1910, the court overruled the demurrer, not, however, upon the questions raised therein, but because it did not appear from the record whether the proceedings had been instituted at the instance of the United States Department of Agriculture or by the United States Attorney of his own motion. The opinion of the court is reported in 181 Federal Reporter at page 629.

The case subsequently came on for trial before Holt, J., and a jury, and the court, on motion of the proctor for the claimants, directed the jury to return a verdict for the claimants upon the ground that no notice had been given to the parties interested in the grape juice under section 4 of the act prior to the filing of the libel. Verdict was returned accordingly and an appeal was taken by the United States to the Circuit Court of Appeals for the Second Circuit. The opinion of the Court of Appeals affirming the decision of the District Court is as follows:

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Before LACOMBE, WARD and NOYES, Circuit Judges.

UNITED STATES, *Libellant-Appellant*,
vs.
74 CASES OF GRAPE JUICE, S. M. Flickinger Company, et al., *Claimants-Respondents.*

Appeal from a decree of the District Court, Western District of New York, entered upon the verdict of a jury rendered in accordance with the direction of the Court in proceedings instituted by the Government for the condemnation, as being adulterated and misbranded, of certain cases of grape juice under the provisions of "The Food and Drugs Act, June 30, 1906," of which Act the relevant portions are printed in the footnote.[1]

[1] "SEC. 2. * * * any person who shall ship or deliver for shipment from any state or territory or the District of Columbia to any other state or territory, or the District of Columbia, or to a foreign country, or who shall receive * * * any such article so adulterated or misbranded within the meaning of this Act * * * shall be guilty of a misdemeanor, and for such offense be fined not exceeding $200, for the first offense, and upon conviction for each subsequent offense not exceeding $300, or be imprisoned not exceeding one year, or both, in the discretion of the court, * * *."

"SEC. 4. That the examinations of specimens of foods and drugs shall be made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of such bureau, for the purpose of determining from such examinations whether such articles are adulterated or misbranded within the meaning of this Act; and if it shall appear from any such examination that any of such specimens is adulterated or misbranded within the meaning of this Act, the Secretary of Agriculture shall cause notice thereof to be given to the party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed as aforesaid, and if it appears that any of the provisions of this Act have been violated by such party, then the Secretary of Agriculture shall at once certify the facts to the proper United States District Attorney, with a copy of the results of the analysis or the examination of such article duly authenticated by the analyst or officer making such examination, under the authority of such officer. After judgment of the court, notice

It was stipulated upon the hearing of the appeal in this Court that the proceedings were instituted by the District Attorney for the Western District of New York, solely upon and by reason of a report made to him by the Secretary of Agriculture of a violation of said Act. It was also conceded that the steps prescribed in section 4 of said Act with respect to notice and hearing had not been taken as a basis for the report made by the Secretary of Agriculture. The District Judge ruled that it was a condition precedent to the institution of proceedings under section 10 of the Act upon a report from the Secretary of Agriculture that said steps prescribed in section 4 should have been taken and, consequently, directed a verdict for the respondents.

NOYES, Circuit Judge (after making the foregoing statement):

The different sections of the Food and Drugs Act while relating to different subjects are consistent and, in many respects, interdependent. The second section—the relevant portions of which have been shown—provides that any person violating the provisions of the Act shall be guilty of a misdemeanor and subject to fine and imprisonment. The tenth section provides that articles sold or transported in violation of the provisions of the Act, shall be liable to seizure and condemnation. Both sections relate to penalties for violations of the Act. The penalty under one section is a fine and imprisonment. The penalty under the other section is the forfeiture of the misbranded or adulterated goods. Both sections are penal in their nature. Punishment is as well inflicted by the forfeiture and loss of property as by a fine. The two sections taken together (with the first section which relates to manufacture in territories) cover the subject of the punishment imposed for breaches of the provisions of the statute.

Section 5 of the Act must also be read in connection with sections 2 and 10. The latter, as we have seen, relate to penalties. The former provides for the enforcement of such penalties. It makes it the duty of the proper District Attorney upon the presentation of "satisfactory evidence" of a violation of the Act by any state health or food officer to cause appropriate proceedings to be

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shall be given by publication in such manner as may be prescribed by the rules and regulations aforesaid."

"SEC. 5. That it shall be the duty of each District Attorney to whom the Secretary of Agriculture shall report any violation of this Act, or to whom any health or food or drug officer or agent of any State, Territory, or the District of Columbia shall present satisfactory evidence of any such violation to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the penalties as in such case herein provided."

"SEC. 10. That any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or Insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in original unbroken packages, * * * shall be, liable to be proceeded against in any District Court of the United States within the District where the same is found, and seized for confiscation by a process of libel for condemnation. And if such article is condemned as being adulterated or misbranded, or of a poisonous or deleterious character, within the meaning of this Act, the same shall be disposed of by destruction or sale, as the said Court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States, but such goods shall not be sold in any jurisdiction contrary to the provisions of this Act or the laws of that jurisdiction; Provided, however, That upon the payment of the costs of such libel proceedings and the execution and delivery of a good and sufficient bond to the effect that such articles shall not be sold or otherwise disposed of contrary to the provisions of this Act, * * * the Court may by order direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States."

instituted and prosecuted. It also provides that the District Attorney shall institute such proceedings in case the Secretary of Agriculture shall report to him any violations of the Act. But in this case it is not required that evidence of a violation of the Act shall be presented. The report of the Secretary is in itself made the basis of proceedings.

Now if section 5 stood apart from other provisions of the statute it would contravene a practice so long and well established as almost to amount to a fundamental right, viz: that proceedings for the punishment of the citizen should be instituted only after investigation by some public official. To compel a District Attorney to institute proceedings upon the report of another official without requiring the latter to investigate before making such report would be most extraordinary. And this Act does not so require. It is made the duty of the District Attorney to act upon the report of the Secretary of Agriculture without the presentation of evidence required in other cases only because section 4 of the Act throws the duty of making investigation upon the Secretary before he makes his report. The preliminary examination in such case is made by the Secretary instead of the District Attorney. The sections are interdependent and must be read together, and when so read they are found to present an orderly and a just procedure. As then the "report" of the Secretary of Agriculture referred to in section 5 is the certificate of facts which he is required to make under section 4, it necessarily follows that the steps required to be taken preliminary to certifying the facts—including notice and hearing—must be taken before such a report as the law requires can be made. And it also follows, upon principles already considered, that when such report is at all a prerequisite to proceedings under section 5, it is as necessary to proceedings for the enforcement of penalties by way of forfeiture as by way of fine or imprisonment.

Looking at the question involved from a slightly different point of view the same conclusion must be reached. Section 4 of the Act—as we have seen—provides for the examination of articles by the Bureau of Chemistry of the Department of Agriculture for the purpose of determining whether they are adulterated or misbranded. If they are found to be adulterated or misbranded notice and an opportunity to be heard must be given to the party from whom they were obtained. If it then appears that the Act has been violated the Secretary of Agriculture must certify the facts to the proper District Attorney. This is the only report of the violation of the Act which the statute requires the Secretary to make. When made it affords, without further investigation, the basis for the institution by the District Attorney of appropriate proceedings for the enforcement of the penalties prescribed in the Act. But it is just as necessary that the report which is the basis for the condemnation proceedings should be made according to law as it is that such report should be a lawful one when it affords the basis for a criminal prosecution.

It must be distinctly borne in mind that the requirement of a preliminary investigation including notice and hearing applies only when the District Attorney acts upon the report of the Secretary of Agriculture. It is not required when he acts upon evidence furnished by any state health officer and undoubtedly would not be required in proceedings taken at his own initiative. Apparently the statute does not contemplate reports by the Secretary except when due examinations have been made, and leaves the ordinary cases requiring immediate prosecution or seizure to the action of local authorities. We perceive no ground whatever for the contention of the Government that if its position in this case be not sustained, section 10 of the Act may as well be treated as a dead letter.

We are aware that decisions have been rendered in several District Courts contrary to the conclusions reached in this opinion. It is sufficient to say that the reasoning of those cases does not commend itself to our approval and that we are unable to follow them.

The decree of the District Court is affirmed.[1]

Decisions of United States District Courts and Circuit Courts of Appeal adverse to the Government will not be regarded as final until acquiescence shall have been published.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 5, 1911.*

[1] It is not necessary to be determined in this case whether section 5 of the Act in any way limits District Attorneys in their right as the prosecuting officers of the United States to institute criminal proceedings or proceedings *in rem* when satisfied by satisfactory evidence obtained from other persons than health officers that the provisions of the Act have been violated; and nothing in this opinion is to be considered as holding that the proceedings in this case could not have been taken by the District Attorney as the result of his own investigation. Our opinion is based wholly upon the stipulation that the District Attorney acted altogether in pursuance of the report of the Secretary of Agriculture.

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F. & D. No. 2152.
S. No. 774. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1046.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF FROZEN EGGS.

On December 8, 1910, the United States Attorney for the Western District of Missouri, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for the Western Division of said district a libel praying condemnation and forfeiture of 175 crates of frozen eggs in the possession of the People's Ice, Storage & Fuel Co.

Examinations of samples from said consignment by the Bureau of Chemistry, United States Department of Agriculture, showed that there were present in 1 cubic centimeter 150,000,000 bacteria, of which 10,000,000 were of the gas-producing type B coli. The libel alleged that the eggs, after shipment by Henry Kalchheim & Co., of Dallas, Tex., from the State of Texas into the State of Missouri, remained in the original unbroken packages and were adulterated in violation of the Food and Drugs Act of June 30, 1906, because they consisted in whole or in part of a filthy, putrid, or decomposed animal substance and were, therefore, liable to seizure for confiscation.

On April 17, 1911, no one appearing as claimant of said eggs, the court found them to consist of a filthy, putrid, and decomposed substance, and that the United States was entitled to a decree of condemnation as prayed for in the libel. Accordingly a decree was entered on said day condemning and forfeiting the eggs to the United States, and ordering their destruction by the United States marshal, and, on April 28, 1911, the said marshal destroyed the said eggs, pursuant to the order of the court.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 5, 1911.*

7216°—No. 1046—11

F. & D. No. 2404.
S. No. 840. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1047.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF BLACK OLIVES.

On February 8, 1911, the United States Attorney for the Western District of Pennsylvania, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of five barrels of black olives in the possession of the Pennsylvania Macaroni Co.

Examination of a sample from said consignment, made by the Bureau of Chemistry, United States Department of Agriculture, showed that 15.4 per cent of the olives were passable, 3.5 per cent were wormy, 42.8 per cent worm-eaten, and 38 per cent decayed. The libel alleged that the black olives, after shipment by Alco G. Psiaki Co., of New York, from the State of New York into the State of Pennsylvania, remained in the original unbroken packages and were adulterated in violation of the Food and Drugs Act of June 30, 1906, because they consisted in whole or in part of a filthy, decomposed, or putrid vegetable or animal substance, and were, therefore, liable to seizure for confiscation.

On March 13, 1911, it appearing from the return of the marshal that he had seized three barrels of said olives and no person having intervened a claim thereto, the court, on motion of the United States Attorney, entered a decree condemning said three barrels of black olives and ordering their destruction by the marshal.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 5, 1911.*

7216°—No. 1047—11

F. & D. No. 2405.
S. No. 841. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1048.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF BLACK OLIVES.

On February 8, 1911, the United States Attorney for the Western District of Pennsylvania, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of four barrels of black olives in the possession of S. Catanzaro & Co.

Examination of a sample from said consignment by the Bureau of Chemistry of the United States Department of Agriculture showed 32 per cent of the olives passable, 7.4 per cent wormy, 32 per cent worm-eaten, and 28.3 per cent decayed. The libel alleged that the olives, after shipment by Alco G. Psiaki Co., of New York, from New York into Pennsylvania, remained in the original unbroken packages and were adultered in violation of the Food and Drugs Act of June 30, 1906, because they consisted in whole or in part of a filthy, decomposed, or putrid vegetable or animal substance, and were, therefore, liable to seizure for confiscation.

On March 13, 1911, it appearing from the return of the marshal that three barrels of said olives had been seized, and no person having intervened a claim thereto, the court entered a decree condemning said olives and ordering their destruction by the marshal.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 5, 1911.*

7216°—No. 1048—11

F. & D. No. 1837.
I. S. No. 14–b. Issued September 23, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1049.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF TWO DRUG PRODUCTS—"RADIO-SULPHO" AND "RADIO-SULPHO BREW."

At the November term of the District Court of the United States for the District of Colorado the grand jury of the United States, upon presentation by the United States Attorney, pursuant to the report to him by the Secretary of Agriculture, found an indictment against Philip Schuch, jr., alleging shipment by him, on April 1, 1910, in violation of the Food and Drugs Act of June 30, 1906, from the State of Colorado into the District of Columbia, of quantities of two drug products labeled, respectively, as follows:

"The Radio-Sulpho Co. Offices 210–211 Mack Bldg., Denver, Colo. Radio-Sulpho Remedy for Rheumatism, diseases of the Skin, Ulcers, Running Sores, Putrid Wounds, Pus, Gan-green, Bloody Flux and Chronic Dysentery. A Delightful Bath for the Healthy as well as for the Sick. Radio-Sulpho Remedy for certain forms of Cancers. Syphilis in any form. Dissolves and removes poisons absorbed into the skin of Printers, Painters, Artists, and Metal Workers." Notice the Radio-Sulpho Remedies do not contain any Poisonous or Injurious Chemicals. Guaranteed by The Radio-Sulpho Co., in accordance with the Pure Food and Drugs Acts, June 30, 1906. Guarantee No. 6743. Radio-Sulpho Trade-Mark Remedy for Rheumatism Skin Diseases, Ulcers, Running Sores, Uric Acid and Blood Poisons. Guaranteed by The Radio-Sulpho Co., in accordance with the Pure Food and Drugs Act, June 30th, 1906. Guarantee No. 6743. Price, $1.00."

"Radio-Sulpho Brew Trade Mark Blood Purifier and Tonic for Indigestion, Constipation, Catarrh, Nervousness, Bloating, Turbid

Liver and Kidney Disorders, is a Laxitive and Prevents Appendicitis. Special Sour Wine Brew 1910. This great remedy is highly beneficial for sufferers with Asthma and Consumption, for it rids the system of all obnoxious substances. Contains Alcohol 2 per cent. Directions—A small wineglassful before meals three times a day; reduce the dose to suit your condition after bowels move freely. It is necessary to take a small dose each day in order to thoroughly cleanse the bowels; entirely removes the catarrhal conditions from the mucuous linings of the stomach, kidneys, intestines and bladder. Invigorates the blood and can be taken by children in reduced doses. Keep in a cool place. Keep well corked. Price $1.00. In accordance with the National Pure Food and Drug Law of June, 1906. Guarantee Number 6743. Compounded by The Radio Sulpho Co., Mfg. Chemists Denver, Colo."

Analysis by the Bureau of Chemistry of the United States Department of Agriculture showed the so-called "Radio-Sulpho" to be a solution of sulphur and sodium hydroxide in water, and the "Radio-Sulpho Brew" to be a solution of magnesium sulphate, together with a small amount of some vegetable material.

Misbranding of the "Radio-Sulpho" was alleged because it bore the statements above set forth, which said statements were false and misleading, in that the word "radio," which constitutes a part of the name of the product, would lead the purchaser to believe that the said article contained radium or radio active properties, and in that said statement represented the article to be a remedy for rheumatism, skin diseases, ulcers, running sores, uric acid, blood poison, cancers, and syphilis in any form; that the said article would dissolve and remove poisons absorbed into the skin of printers, painters, artists, and metal workers; that the said article was a remedy for putrid wounds, pus, gangrene, bloody flux, and chronic dysentery, whereas, in truth and in fact, said article was not a remedy for cancers, syphilis, or rheumatism, ulcers, running sores, uric acid, putrid wounds, or gangrene, nor did it possess any power to dissolve or remove poisons absorbed into the skin of printers, painters, artists, and metal workers.

Misbranding of the "Radio-Sulpho Brew" was charged because it bore the statements above quoted, which said statements were false and misleading, because the product did not contain any radio-sulpho or radio active properties whatsoever, and because said "Radio-Sulpho Brew" would not prevent appendicitis; was not a remedy highly beneficial for sufferers with asthma or consumption, would not rid the system of all obnoxious substances, and was worthless and ineffective as a remedy for asthma and consumption.

In due course, a jury was impaneled, and after hearing the evidence on the part of both parties, and after argument by counsel, the court instructed the jury as follows:

UNITED STATES OF AMERICA,
District of Colorado. } ss.

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE DISTRICT OF COLORADO, SITTING AT DENVER.

No. 2405.

THE UNITED STATES OF AMERICA, *Plaintiff*,
vs.
PHILIP SCHUCH, JR., *Defendant.*

GENTLEMEN OF THE JURY: The defendant, Philip Schuch, Junior, is on trial under an indictment which charges him with the commission of two separate criminal offenses. These offenses charged in the indictment are in violation of the act known as the Food and Drugs Act, passed by Congress in 1906. That act, among other things, provides that the introduction into any state or territory, or the District of Columbia, from any other state or territory, of any article of food or drugs which is misbranded, within the meaning of this act, is prohibited, and any person who shall ship, or deliver for shipment, from any state or territory or the District of Columbia to any other state or territory or the District of Columbia, any such misbranded drugs shall be guilty of a criminal offense. That act further provides that the term drug, as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. It also provides that the term "misbranded," as used in the act, shall apply to all drugs, the package or label of which shall bear any statement regarding such article which shall be false or misleading in any particular.

The indictment, in its first count, charges that the defendant knowingly and unlawfully did sell and ship, and deliver for shipment, for Inter-state carriage from the City and County of Denver, in the District and State of Colorado, to and into the District of Columbia, an article and preparation of drugs called Radio-Sulpho, which article was misbranded in that the labels on the package containing said Radio-Sulpho had thereon the following, "Radio-Sulpho, Remedy for Rheumatism, Diseases of the Skin, Ulcers, Running Sores, Putrid Wounds, Pus, Gangrene, Bloody Flux and Chronic Dysentery." "Radio-Sulpho, a Remedy for certain forms of Cancer, Syphilis in any form; dissolves and removes Poisons absorbed into the Skin of Printers, Painters, Artists, and Metal-workers. A Remedy for Rheumatism, Skin Diseases, Ulcers, Running Sores, Uric Acid and Blood Poisons." And it charges that the defendant, Philip Schuch, Junior, then and there well knew that the said statements were false and misleading, and that the said packages, in the particulars just referred to, were misbranded.

The charge in the second count of the indictment is similar in the respects noted, in that the defendant is charged with knowingly and unlawfully selling and shipping, and delivering to be shipped, the preparation offered in evidence called Radio-Sulpho Brew from the State of Colorado to the District of Co-

lumbia, and that said package containing Radio-Sulpho Brew was misbranded, in that it contained the following inscriptions, "Radio-Sulpho Brew, Blood Purifier and Tonic for Indigestion, Constipation, Catarrh, Nervousness, Bloating, Turbid Liver and Kidney Disorders. Is a Laxative, and prevents Appendicitis. This great Remedy is Highly Beneficial for Sufferers with Asthma and Consumption, for it rids the System of all Obnoxious Substances." And the charge is also contained in this count of the indictment to the effect that the defendant, when he so sold, shipped and delivered for shipment the two packages of Radio-Sulpho Brew offered in evidence well knew that said bottles containing the same were misbranded.

Now the question for the determination of the jury in each count of this indictment is whether or not the defendant did, as is charged in these counts, ship from the State of Colorado to the District of Columbia the Radio-Sulpho and the Radio-Sulpho Brew, and whether or not both, or either, of these preparations were misbranded in the particulars mentioned as to the inscriptions contained on the packages of these preparations, in that they made false representations as to their curative properties, and that the defendant, at the time he so shipped the same, did not know that they were curatives for those purposes.

These are criminal charges, and the rule applicable in all criminal cases for the guidance of the jury is, of course, applicable here to the effect that a defendant in a criminal case is not called upon to prove his innocence; the presumption of law is that he is not guilty, and this presumption abides with him throughout the case until it is overcome and his guilt has been established by the testimony; and it must be established, before you can find him guilty on either count, by the testimony to your reasonable satisfaction, beyond a reasonable doubt. A reasonable doubt, however, does not mean a mere possibility of innocence; it means a substantial doubt, founded on the evidence in the case, or the lack of evidence. If, after you have considered all the testimony in this case you cannot say to yourselves that you are convinced of the defendant's guilt, then you have a reasonable doubt and you must acquit him; but if, on the other hand, after carefully considering all the testimony in the case, you can say to yourselves, under your oaths, that you have an abiding conviction that the defendant is guilty as charged in the indictment, then you have no doubt and you must return, in that event, a verdict of guilty.

Now you are the sole judges as to what the facts are; you determine the facts in the case, the Court determines and tells you what the law applicable to the facts in the case is. You take that testimony and applying it to the rules of law given you by the Court you thereon render your verdict. You are also the judges, and the sole judges, of the weight of the evidence and of the credibility that you will give to the testimony of each witness; the Court has nothing to do with determining the credibility of the witnesses who testified before you, or the weight to be given to the testimony of those different witnesses. You might discover, or might think you discover, that the Court was of a certain opinion about the facts, or about the credibility of some particular witness, and yet if what you thought the Court believed in that respect did not correspond with your belief about it you ought to follow your own convictions, and not permit what you might think the Court thought about it to influence you in any wise. The law vests with you the sole duty and the sole power of determining what the facts are in the case. As a principle of law, however, the Court tells you that if you should believe that any witness has knowingly and wilfully testified falsely to any material fact you are at liberty to disregard all of the testimony of such witness, except in so far as it may be corroborated by other

facts and circumstances in the case; and in determining what weight you will give to the testimony of each witness you should consider the apparent disposition of that witness to tell the truth, his familiarity with the facts about which he attempts to speak to you, his intelligence, his candor, his fairness, his interest, if any, in the case and the result of this trial, and then, with those as guides, give to the testimony of each witness such weight, and to him such credibility, as you, in your good judgment, believe it entitled to receive.

Now, I shall consider and comment upon some of the evidence in this case, having you clearly understand that I do not do so for the purpose of indicating what the impression of the Court is as to what the facts are, but simply, after having heard a trial continued over some four or five days, of briefly calling attention to the prominent facts that you will necessarily have to take into consideration, and calling attention, perhaps, to some conflicting testimony in the case, for the purpose of having you consider these conflicts when you retire to determine what the facts are and what your verdict shall be. Some of these inscriptions on the package containing the Radio-Sulpho represent it to be a remedy for certain diseases. Those representations must be taken in their popular sense, because the evident purpose of the representations on those different packages were representations to the public and not simply to professional men who are schooled in chemistry and physics, and the word remedy, in its ordinary sense, means that which cures a disease—any medicine or application which puts an end to disease and restores health.

Now we come to notice the inscriptions first on the Radio-Sulpho; it is said to be a remedy for rheumatism; several witnesses testified that they had taken it for rheumatism and in their belief they had been cured. The weight of that testimony, when considered in the sense in which it was represented on the package as being a remedy for rheumatism, cannot, of course, be properly determined until we know in a given case whether or not first the patient actually had rheumatism. These witnesses were permitted to testify that they had rheumatism, it is for you to determine whether or not in fact they did have rheumatism; if you believe that that ailment is of such common prevalence, and has reached such common knowledge among men, that any man, and especially these witnesses who came before you and testified that they did have rheumatism, that they were able to diagnose and correctly tell you that their ailment at the time was rheumatism, then you have established that fact, and the only other fact for your consideration in reference to that ailment would be the inquiry as to whether or not the use of Radio-Sulpho, or Radio-Sulpho in connection with Radio-Sulpho Brew, effected the cure. If you so found that would go far to sustain a finding on your part that Radio-Sulpho is a remedy for rheumatism.

It also represents that it is a remedy for diseases of the skin, ulcers, running sores, bloody flux and chronic dysentery. There were one or two witnesses who testified to having some sort of affection of the skin; I believe one witness yesterday, the old gentleman, said he had eczema for many years and that Radio-Sulpho cured him almost instantly. The same rule, the same suggestions, that I have made in reference to rheumatism, of course, apply to each of these others, first, the inquiry as to whether or not he had a disease of the skin; secondly, whether or not there is evidence in this case that Radio-Sulpho will cure such a disease. Now, as against this testimony of these witnesses who told you that they had had some of these ailments and had been cured by taking these remedies, you have the positive testimony of men who have been schooled in the profession of medicine and in chemistry, and they tell you that the analysis made by Dr. Kimberly and Dr. Hill does not disclose anything

that could possibly be a remedy, or cure, or help in any respect for any of the diseases mentioned on the bottles offered in evidence. You cannot weigh the testimony and reach a correct determination as to rheumatism by considering the testimony alone of the witnesses who came before you and said that they had rheumatism and were cured of it, without considering with it the testimony of these gentlemen who have made it a life study, who have pursued at schools instituted for that purpose the different effects of the different drugs, and compounds of the different drugs, that may possibly be any aid in the kind of diseases mentioned on these packages. Men may be mistaken about as simple a disease as rheumatism. I do not say they were mistaken; it is for you to consider whether or not, in connection with the testimony of the witnesses on the part of the government, their statements that they had rheumatism and that these remedies cured that rheumatism are convincing to that effect.

It is also claimed on those packages that this Radio-Sulpho is a remedy for certain forms of cancer. A great deal of evidence has been devoted in describing to you what cancer is. Mr. Schuch was permitted to testify that he was competent to diagnose cancer, and his competency, as disclosed, was obtained, as he said, by studying that particular disease under eminent specialists who had made it their life work, and among others Dr. W. T. Bull of New York. You will recall what he said about that, what Dr. Bull did—gave him private lectures or instructions and took him with him to see his patients. It was contended on the part of the government, and some evidence was offered for the purpose of showing that the defendant did not know Dr. Bull, couldn't possibly have been with him, because, as counsel for the government say, he was described by the defendant in appearance a different man than the description given of him by Dr. Powers, who was his associate and partner for some eleven years. And that you must determine. It was also claimed by the defendant that he studied this same disease at Chicago under some two or three physicians who had made it a specialty, and in connection somewhat with Doctor Harper. Some testimony was given as to the profession and the life work of Doctor Harper, and that it was wholly devoted to biblical investigations, and while at Chicago, during the time the defendant says he met him and associated with him and paid him $350 to introduce him to these other physicians and give him some special instructions, he was then president of Chicago University. That is questioned by the government. It is for you to determine the weight that you will give to the conflicting evidence, if it be conflicting, upon that question. I mention this to you for the purpose of indicating that Mr. Schuch was permitted to testify that he could diagnose cancer because he had studied under specialists in the treatment of cancer. If you should find that he did not investigate this disease under men who were competent to instruct him in that respect, it would only go to affect the question as to whether or not he knows cancer when he sees and examines a case of cancer. He also testified that he studied chemistry under other specialists, and I do not recall that there is any contradiction of that. And he also says that he studied it on independent investigations made by himself.

Now witnesses have testified that they had cancer, or were treated for cancer, and were cured by the use of these remedies; they were permitted to say that because the defendant had already testified, qualifying himself in the particulars just referred to, that they had cancer; but if he were unable to determine whether or not they had cancer, none of those witnesses testifying that they knew anything about cancer, there wouldn't be much left on which you could base a finding that any of these witnesses who testified that they had cancer and had been cured by the use of these remedies, did in fact have cancer.

And as against that, and to be considered along with it in determining whether or not these remedies have ever been used successfully in a case of cancer, we have the testimony of, I think, practically all of the witnesses offered by the government, physicians and surgeons of many years practice, who say that the only possible way to diagnose cancer is with the microscope, which was not the way adopted, as I recall the testimony, in any of the cases treated by the defendant. And it has been questioned whether or not some of the cases which were claimed to have been treated by the defendant had cancer, and in the case of the witnesses who testified whether or not it was cancer at all. You will recall that counsel read extracts from the standard authorities defining cancer, and the kinds of cancer, and the instances in which a case may be properly considered a cancer or not a cancer at all. Witnesses for the government also testified, some of them, if not all of them, that science has not yet disclosed a remedy for cancer unless it be the use of the knife. I believe the witness offered by the defendant, Dr. Smolenski, said that there was no known remedy. Therefore, gentlemen of the jury, if you find and believe from the testimony that these preparations were put into Inter-state commerce by shipment by express from Colorado to the District of Columbia, and that the one called Radio-Sulpho had on it the representation that it was a remedy for certain forms of cancer, which was false, and that it was not, and is not, a remedy or cure for any kind of cancer, then it will be your duty to find the defendant guilty, even if you find all of the other inscriptions on these packages were true representations as to the curative properties in controversy.

A further inscription was that it was a remedy for syphilis in any form. I do not recall any specific evidence that Radio-Sulpho would cure syphilis in any form; it may be that the defendant, in his testimony that these compounds had contents not disclosed by the analyses, which he did not describe to us, had certain elements which, in his belief, which in his knowledge, as he claims, so operated upon the system in a case of that disease that it would cure it; but it is for you to search your memories and determine whether or not there is any evidence in the case that Radio-Sulpho is a remedy for syphilis in any form. And if there be such evidence, then to consider with it the evidence offered by the government, its witnesses testifying that there was nothing in either of these compounds, or in this Radio-Sulpho, that was a cure or remedy for syphilis in any form.

You understand, gentlemen of the jury, that the testimony of the physicians, such men as Dr. Freeman, and Dr. Hall and Dr. Bergtold, and perhaps one or two others, to the effect that these preparations were not cures for any of these diseases, was based upon the analyses made by Dr. Kimberly and Dr. Hill. These physicians, of course, have not analyzed these medicines; they are separate professions; they act, as they told you, upon the analyses furnished by the chemists, and having technical knowledge as to the effect of each drug and taking the analyses made by the chemists and each drug that they may see fit to use, they accept what he says about its contents, and then apply their knowledge as to the effect of each element in the compound. So that, if you should find and believe from the testimony, beyond a reasonable doubt, that that is not a remedy for syphilis in any form, and that it was so represented upon this package, then that is a misbranding within the sense of the Food and Drugs Act, and the defendent is guilty, and you should so state in your verdict.

Congress, of course, has no power to control the use of these drugs and preparations, under this act, except when they become introduced into Interstate commerce, that is, shipment from one state to another. The Constitu-

tion of the United States vests Congress with the power to regulate Inter-state commerce, and in that manner it can reach the question; but if they are kept out of Inter-state commerce it is a matter purely for the several states. It can say, it has the power to say, under the Constitution, and it has said, that when drugs or foods are introduced into Inter-State commerce they shall be truly labeled so that the public will not be deceived—they must not be misbranded—that is what it did by this act.

This Radio-Sulpho, as already said, also is branded to the effect that it will dissolve and remove poisons absorbed into the skin of Printers, Painters, Artists and Metal-workers. It represents that it is a remedy for Rheumatism, Skin Diseases, Ulcers, Running Sores, Uric Acid and Blood Poison. We are not concerned, gentlemen of the jury, with any other kinds of patent medicines; we are not to determine the issues in this case, as to this defendant, in any sense by our prejudices in favor of or against patent medicines. We are to consider the facts in this case alone, and the law applicable to it, and decide it in accordance with the facts and the law in this case.

We pass to the second count. The first count is a charge as to the Radio-Sulpho, the second count as to the Radio-Sulpho Brew. The fore part of the inscription as to the Radio-Sulpho Brew is not as broad in its representations as that with reference to Radio-Sulpho. The fore part does not specifically claim that it is a remedy or cure for the diseases which I now mention, but says that it is a Blood Purifier and Tonic for Indigestion, Constipation, Catarrh, Nervousness, Bloating, Turbid Liver and Kidney Disorders, and is a Laxative. The testimony shows that the Radio-Sulpho Brew, as I recall it, contains five per cent epsom salts, and I believe the testimony fairly indicates that epsom salts is a recognized remedy for constipation. I do not recall whether or not the testimony shows that it is used for indigestion or not, outside of the claim of the defendant that he used it for that purpose. But that same part of the inscription on that package then continues and says "and prevents Appendicitis." I will not attempt to review, even in a general way, the testimony of the physicians who told us what science, as they understand it, has disclosed up to the present time about appendicitis, but leave it to you to determine, under all the facts in this case, whether or not Radio-Sulpho Brew will prevent appendicitis. If you find from the testimony, beyond a reasonable doubt, that it will not prevent appendicitis then that was a misbranding, in violation of the act, and you will find the defendant guilty on that count, otherwise he is not guilty as to that particular part of the inscription.

That package containing Radio-Sulpho Brew, as charged in the indictment, also contained this inscription, "This great Remedy is Highly Beneficial for Sufferers with Asthma and Consumption, for it rids the System of all Obnoxious Substances." I believe we had one witness on the part of the defense who testified that he had had consumption in a very advanced stage, and took this Radio-Sulpho Brew and he believed he had been cured. We must recur again to the inquiry as to whether or not he had consumption, and if you so find, then the inquiry whether or not he has been cured; and then again the inquiry, even if he did have it and has been cured whether or not he was cured by the use of Radio-Sulpho Brew. If not, then there is but slight, if any, evidence, as I recall it, you may recall some, to the effect that Radio-Sulpho Brew will prevent consumption, not prevent it but is highly beneficial for consumption in any stage. The testimony on the part of the government was to the effect that there was nothing in Radio-Sulpho Brew, according to the analyses made by Dr. Hill and Dr. Kimberly, that would be in any particular beneficial or helpful or at all affect the disease known as consumption. So that, if you

should find and believe from the testimony that this Radio-Sulpho Brew, as testified by Dr. Morgan, and I believe also so stated by the defendant, was shipped from Colorado by express to Dr. Morgan in the District of Columbia, thereby becoming an article of Inter-state commerce, and that one of the inscriptions on it was that it was a remedy highly beneficial for sufferers with consumption, and you should further find and believe from the evidence, beyond a reasonable doubt, that it was not highly beneficial for sufferers with consumption, then it was misbranded in that particular; although you might find that it was not misbranded in any other particular, yet if misbranded in this particular the defendant is guilty of having violated this Pure Food and Drugs Act in this shipment, and you must return a verdict of guilty.

This same part of the label, in this same sentence, also represents "This Great Remedy is Highly Beneficial for Sufferers with Asthma." You will recall and apply the testimony in the case as to the effect, if any, Radio-Sulpho Brew might have on asthma. Of course, gentlemen of the jury, as contended by the defendant's counsel, every honest man is hopeful that some remedy will be discovered for the cure of cancer, and perhaps it may not be of great weight in considering whether or not a remedy may be discovered to-day that one had not been discovered before to-day, but simply because a man says he has a remedy, and in his opinion it will cure, that he has tried it on cases that he thought were cancer and in his opinion it cured those cases, isn't any evidence that there are any such properties in that so-called remedy unless and until he has shown himself capable of diagnosing cancer, the remedy has been tried sufficiently to demonstrate that it effected the cure, and that the cure was not effected from some other cause.

The defendant declined to disclose other contents which he said could be found in these packages; he declined to tell us because, he said, it was a great secret that belonged to the Radio-Sulpho Company. I do not say to you that that is a sufficient reason why he should not have told you, I leave that to you. I can understand that from a financial point of view that would be a very powerful incentive for a man, where he knew that he had a remedy unknown to any one else, because in the case of any of these diseases it would necessarily afford a marvelous income. You must determine whether or not that was a sufficient reason, and whether or not his mere word that there are other ingredients in it which he has failed to disclose, is such testimony as will convince you that there are other ingredients in it. He says that it takes him forty days to make the Radio-Sulpho and thirty days to make the Brew. According to the analyses of the chemists the contents are simple, the analysis was not difficult, and they apparently speak with confidence when they say that they found all there was in it, except they do say that there was a small amount of solids which they said were inert or inactive for anything.

You will be given, gentlemen of the jury, two forms of verdict on each count; one on the first count, which relates to the Radio-Sulpho alone, of guilty and one of not guilty. You will use one of those forms of verdict, and when you have agreed on your verdict on that count your foreman, whom you will select, will sign it. You will also be given two like forms of verdict on the second count, and your foreman will also sign your verdict on that count, and when you have reached a verdict on each count you will return them into court.

Mr. Ward. May it please your Honor, I would like to suggest that your Honor at this time instruct the jury as to the legal effect of the use by Dr. Morgan of the name Joy for use in getting this medicine.

The Court. I think that is hardly necessary. Gentlemen of the jury, the District Attorney asks that I call the attention of the jury to the fact that

the shipment of the two bottles of Radio-Sulpho and Radio-Sulpho Brew were obtained by Dr. Morgan under a false name; that, gentlemen of the jury, is utterly immaterial. Congress passed this law and it is the duty of the officers in every capacity, who have anything to do with the prosecution of crime or with the enforcement of the different acts of Congress, to use whatever means they think may be most successful in enforcing the act and suppressing what Congress intended should be suppressed; therefore the fact that Dr. Morgan wrote under an assumed name, the fact that he stated in his letters things that perhaps were not true, is not to be considered by the jury at all in arriving at a verdict. The sole question in the case is whether or not the defendant introduced these articles into Inter-state commerce, as charged, and whether or not they were misbranded, as provided in the Pure Food and Drugs Act; if he did he is guilty, if he did not he is not guilty.

After due deliberation, the jury found the defendant guilty as charged in the above indictment. Thereupon defendant filed his motion for a new trial, which is pending.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 8, 1911.*

1049

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F. & D. No. 2432.
S. No. 851.
Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1050.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF VINEGAR.

On February 15, 1911, the United States Attorney for the Eastern District of Wisconsin, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, praying condemnation and forfeiture of ten barrels of vinegar in the possession of the Zinke Mercantile Co. The product was labeled: "46 gal. B. T. Chandler & Sons, 27—55th St., Chicago, Ill. Saratoga Brand Vinegar, a blend of pure apple cider and distilled vinegar. Guaranteed under the Food and Drugs Act of June 30, 1906."

Analysis of the sample of this product, made by the Bureau of Chemistry of the United States Department of Agriculture, showed the following results: Solids, 0.65 gram in 100 cc; reducing sugar direct, 0.35 gram in 100 cc; reducing sugar invert, 0.42 gram in 100 cc; nonsugar solids, 0.23 gram in 100 cc; polarization, direct, at 20° C., + 0.4°; ash, 0.04 gram in 100 cc; acid, as acetic, 3.98 grams in 100 cc.

The libel alleged that the vinegar after transportation from Illinois into Wisconsin remained in the original unbroken barrels, and was misbranded in violation of the Food and Drugs Act of June 30, 1906, because the label on the barrels represented said vinegar to be a blend of pure apple cider and distilled vinegar when in fact pure apple cider and distilled vinegar are not like substances, and a mixture of the two is not a blend under said act, and because the statement on the label that the product is a blend of pure apple cider and distilled vinegar gave the impression that it is a blend of pure apple cider vinegar and distilled vinegar when in fact there is no apple

cider vinegar contained in the said product, and the statement is therefore false and misleading and calculated to deceive and mislead the purchaser, and that the said product was therefore liable to seizure for confiscation.

On February 23, 1911, the Zinke Mercantile Co. appeared as claimant of said product and filed exceptions to the libel. On April 19, 1911, the court, in overruling the exceptions to the libel, rendered an opinion in form and substance as follows:

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN.

THE UNITED STATES OF AMERICA, *Libellant*,
vs.
TEN BARRELS OF VINEGAR. } April 19, 1911.

This is a case arising under the Pure Food Act, so called. A demurrer has been interposed to the libel, which raises the question whether the vinegar in question was misbranded, under the terms of Section 8 of said act, which provides substantially that the term "misbranded" as used in the act, shall apply to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device; regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, etc.

The vinegar in question was labeled as follows: Gal. Established 1875. Dayton, O. We warrant our vinegar to test 40 grains in strength B. T. Chandler & Son, 27 East 55th Street, Chicago. Manufacturers and Wholesale Dealers in Saratoga Brand Vinegar. A blend of pure boiled apple cider and distilled vinegar. We guarantee the Vinegar sold under our brand to comply with the requirements of the national and state pure food laws. For ———.

GUY D. GOFF, U. S. Atty for the Government.
GORHAM & WALES for the Claimant.

QUARLES, *District Judge.*

The contention of the Government is that the label is so framed as to mislead the average customer who reads the same casually. The eye naturally rests upon the words in large print "Saratoga Brand Vinegar," then in smaller type "Pure Boiled Apple Cider," and in the third line, in larger print "Distilled Vinegar." Without the aid of marks of punctuation, it is contended that the words "A blend of Pure Boiled Apple Cider and Distilled Vinegar" may naturally describe two brands of vinegar that are blended, and the words "Pure Boiled Apple Cider" are merely descriptive of one of such ingredients.

It is matter of common knowledge that cider vinegar is far superior to distilled vinegar. The popularity of cider vinegar is so general that this brand, not subjected to critical examination, would naturally arouse the expectation that cider vinegar has been blended with distilled vinegar. That, like the Delphic Oracle, the label, in the absence of punctuation, may be read either way, and the average buyer might naturally be mislead in the premises.

If, as matter of first impression, the label naturally conveys the idea that cider vinegar is one of the ingredients, then it is calculated to deceive, although a deliberate reading of the label might correct such impression. It is matter of common observation that the average retail purchaser of such commodities

does not delay to make a careful analysis of the label, but contents himself with a hasty glance or cursory examination. If therefore, this label would lead such purchaser at first blush to the conclusion that here was a blend of two vinegars, one of which was cider, it would fall within the definition of misbranding under section 8. In other words, the ordinary purchaser reading this label, would not be led to suppose he was buying distilled vinegar compounded with a foreign element. He is comforted with the assurance "We guarantee the Vinegar sold under our brand to comply with the requirements of the National and State Pure Food Laws."

There is another subdivision of the Pure Food Act which must be considered pari materia with the clause already under consideration, Section 8, subdivision 4, paragraph 2, is in substance as follows. An article of food which does not contain any poisonous or deleterious ingredients shall not be deemed misbranded if labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound" "imitation" or "blend" as the case may be, is plainly stated on the package in which it is offered for sale. Up to this point the label in question conforms with the act and, if the legislative conditions ended here, there could be no just cause of complaint. But Congress added another requirement in the case of a blend—"provided that the term blend as used herein shall be construed to mean a mixture of like substances" etc. If the substances so blended are not similar, the statement on the label that they are blended is not sufficient to secure immunity.

The defendants contend that this restrictive proviso applies only where the blend is claimed without disclosure of ingredients, and has no application whereas here, the component parts of the blend are disclosed. This construction seems to be too narrow. One prime object of this legislation is to prevent the public from being misled or deceived. In view of the language of the act we are justified in saying that the term "Blend" as here displayed on the label, is an assurance to the public that the mixture consists of like substances: and in the present case it is an assurance that the "Saratoga Brand Vinegar" consists of two like substances, that is, distilled vinegar and a vinegar derived from apple cider. In this regard the label is false and misleading.

We have seen how naturally the buyer might be misled by a casual examination of the label. The use of the term "Blend" coupled with a specific reference to the Pure Food Act, is well calculated to confirm such mistake, in view of the guaranty that the vinegar sold under this brand meets all the requirements of the National Pure Food Law. Special significance is thus given to the statutory definition of the term "blend". It is true that boiled apple cider might be used as a harmless agent to give color or flavor to the distilled vinegar; but in such a case the boiled cider would be an infusion as distinguished from a "blend", and the public would be entitled to notice of its use for that qualified purpose. Here it is presented to the public as a blend, which is falsely misleading, because it is conceded that no cider vinegar whatever is contained in these packages.

Defendants cite in support of their contention, In re Wilson, 168 fed. 556; United States vs. Boeckmann, 176 Fed. 382; United States vs. 68 cases of Syrup, 172 Fed. 782.

The Wilson case is not in point, because there the substances comprising the "Gold Leaf Syrup" were both like substances, and under the terms and provisions of the act could properly be blended. The ingredients were maple and white sugar, and it is apparent that there was no misbranding in that case.

In the Boeckmann case, supra, the product was labeled "Compound" "Pure Comb and Strained Honey and Corn Syrup". It will be observed the representation in that case was that it was a compound, as distinguished from a blend. So that has no bearing on the instant case.

In United States vs. 68 Cases of Syrup, supra, the court treated the extract of maple wood as a saccharine substance which might be blended with refined cane sugar, and that they constituted a blend within the meaning of the act. In the case at bar, we have no two similar substances, but only one substance; namely, distilled vinegar, which has been mixed with a product wholly unlike distilled vinegar. While the reasoning in this case is not satisfactory, a careful examination will show that it does not rule the instance case.

The Government cites the case of United States vs. Scanlon, 180 Fed. 485. This is a very interesting and well reasoned case and goes far to sustain the conclusion we have already reached in this case. The defendant in that case manufactured syrup of cane sugar flavored to imitate maple syrup by the introduction of an extract from maple wood after it had been chopped down. The syrup was put up in bottles labeled "Western Reserve Ohio Blended Maple Syrup," the words "Ohio" and "Maple Syrup" had between them the word "Blended" and then in small type the statement "This syrup is made from the sugar maple tree and cane sugar." The court held that the label was misleading in that purchasers would ordinarily understand that the article contained in part maple syrup made from the sap drawn from live maple trees, and therefore the article was misbranded.

I am constrained to hold that the vinegar in this case was misbranded within the meaning of the Pure Food Act, and therefore the demurrer will be overruled with leave to respondent to answer within twenty days if so advised.

On May 25, 1911, the claimant to said property having consented that judgment of forfeiture pro confesso be entered, and it appearing from the return of the marshal that he had duly seized seven of the ten barrels of vinegar mentioned in the libel, the court found and declared the seven barrels of vinegar misbranded as alleged in the libel, and condemned and forfeited the same to the United States, and directed the marshal to sell the seven barrels of vinegar on such terms and conditions as were not in violation of the aforesaid act.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 8, 1911.*

1050

INDEX TO NOTICES OF JUDGMENT 1001 TO 1050.[1]

[Arranged under heads: Foods (p. 5); Beverages, including waters and medicated soft drinks (p. 6); Drugs (p. 6).]

FOODS.

[1] For index of Notices of Judgment 1–1000, see Notice of Judgment 1000; future indexes to be supplementary thereto.

BEVERAGES, INCLUDING WATERS AND MEDICATED SOFT DRINKS.

DRUGS.

F. & D. No. 2119.
I. S. No. 1009–c.
Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1051.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF GESSLER'S MAGIC HEADACHE WAFERS.

On February 4, 1911, the United States Attorney for the Eastern District of Wisconsin, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against Max Gessler, alleging shipment by him, in violation of the Food and Drugs Act, on July 7, 1910, from the State of Wisconsin into the State of Massachusetts, of a quantity of a certain drug that was misbranded. The said drug was labeled as follows: (On carton) "Gessler's Magic Headache Wafers * * * 'Cure while you wait' * * * Guaranteed to cure headache and neuralgia, nothing else, but these sure in twenty minutes or your money back. Manufactured by Max Gessler, Ph. C., Milwaukee, Wis., U. S. A." (On box) "Gessler's Magic Headache Wafers Manufactured only by Max Gessler, Ph. C., Milwaukee, Wis., U. S. A. Each ounce of Gessler's Magic Headache Wafers contains 250 grains Acetanilide or 5 grains Acetanilide in each tablet. Don't experiment with a headache remedy. Take one that is guaranteed—one that has had the endorsement of both the profession and the public for more than a score of years. 'Gessler's' are guaranteed by your druggist to cure headache and neuralgia from any cause in twenty minutes or your money back. * * *" (In booklet enclosed with the product) "'Gessler's' have the power to cure headache and neuralgia, nothing else, but these sure in twenty minutes or your money back. They are guaranteed to contain no * * * harmful substances. They leave no bad after effects. Woman's headaches caused by * * * are quickly cured by the use of Gessler's Magic Headache Wafers. * * * Easy way to cure a headache."

Analysis by the Bureau of Chemistry of this Department showed the product to consist essentially of caffeine and acetanilide. Misbranding was alleged in the first count of the information for the

reason that the label on said drug claimed curative powers and properties for the cure of headache and neuralgia, which were false, misleading, and deceptive, and misbranding was alleged in the second count for the reason that the product contained an ingredient, to wit, acetanilide, which may have a harmful effect upon the user, and which is apt to leave a bad effect contrary to the claims set forth in said label, whereas said label claimed that the article did not contain any harmful substance, and that the article leaves no after effect, which claim and statement regarding said article or product were false, misleading, and deceptive.

On May 25, 1911, the defendant was arraigned, pleaded guilty, and was sentenced to pay a fine of $15.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 8, 1911.*

1051

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F. & D. No. 2619.
S. No. 935. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1052.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF EVAPORATED MILK.

On April 28, 1911, the United States Attorney for the Northern District of Illinois, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 219 cases containing 10,512 cans of evaporated milk found in the warehouse of the Kepler Warehouse Co. The cases containing said milk were labeled as follows: "Faultless Brand Evaporated Milk—Faultless Condensed Milk Company, Kansas City, Mo., U. S. A., 48 cans tall size;" and each of the cans filled with the said milk was labeled: "Faultless Brand Pure Sterilized Evaporated Milk—Manufactured by the Faultless Condensed Milk Company, General Offices, Kansas City, Mo., U. S. A., Factory Tonganoxie, Kansas, U. S. A."

Examination of samples from said consignment made by the Bureau of Chemistry of the United States Department of Agriculture showed the following results: "Fat 5.15; total solids 15.95; protein 4.15; ratio of protein to fat 1 to 1.24." The libel alleged that said milk was transported from Missouri into Illinois, and remained in the original unbroken packages, and was misbranded in violation of the Food and Drugs Act of June 30, 1906, because the labels on the cans containing the milk represented it a pure sterilized evaporated milk otherwise known as a condensed milk, whereas in fact said milk was not a pure sterilized evaporated milk nor a pure sterilized condensed milk, but an imitation thereof, and was therefore liable to seizure for confiscation.

On June 5, 1911, no claimants to said product having appeared, and the case being in default, an order of default, forfeiture, and summary judgment of condemnation and destruction was entered by the court.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 8, 1911.*

7217°—No. 1052—11

F. & D. No. 2396.
I. S. No. 3376–c.

Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1053.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO PASTE.

On May 31, 1911, the United States Attorney for the District of New Jersey, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against Pietro Roncoroni Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about November 3, 1910, from the State of New Jersey into the State of California, of a quantity of tomato paste that was adulterated.

Examination by the Bureau of Chemistry of this Department of a sample of this product showed it to contain yeasts and spores at the rate of 380 per one-sixtieth mg., bacteria very numerous, estimated at one billion per gram, molds in 70 per cent of the microscopic fields examined, with many pieces of decayed tissue visible to the naked eye. Adulteration was alleged for the reason that said product consisted in whole or in part, as shown by the aforesaid examination, of a filthy, putrid, or decomposed animal or vegetable substance.

On May 1, 1911, the defendant pleaded non vult, and sentence was suspended by the court.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 8, 1911.*

7217°—No. 1053—11

F. & D. No. 2326.
I. S. No. 2235–c. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1054.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF COMPOUND CATSUP.

On May 15, 1911, the United States Attorney for the Northern District of Illinois, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against Fred C. Edler, doing business as the Huss-Edler Preserve Co., alleging shipment by him, in violation of the Food and Drugs Act, on or about August 15, 1910, from the State of Illinois into the State of Missouri, of a quantity of compound catsup which was adulterated. The said product was labeled: "From Huss-Edler Preserve Company, 75 and 77 West Kinzie Street, New Numbers 612 to 622 same location, Chicago. To H. A. Woerman, St. Louis, Mo. Compound Catsup Contains 1/10 of 1% Benzoate of Soda. Sweetened with Saccharin. Via. C. & A."

An examination, by the Bureau of Chemistry, United States Department of Agriculture, showed the following results: Yeasts and spores 83 per one-sixtieth cmm., bacteria 120,000,000 per cc., molds in about 35 per cent of the fields; and that the pulp from which the product is made is largely from apple or some similar fruit and not tomato. Adulteration was therefore alleged for the reason that said product consisted in part of a filthy vegetable substance, as disclosed by the aforesaid examination.

On June 1, 1911, the defendant pleaded guilty and a fine of $200 was imposed.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 9, 1911.*

7946°—No. 1054—11

F. & D. No. 2410.
I. S. No. 10511–c. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1055.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO KETCHUP.

On April 17, 1911, the United States Attorney for the District of New Jersey, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against A. C. Soper & Co., alleging shipment, in violation of the Food and Drugs Act, on September 19, 1910, from the State of New Jersey into the State of New York of three barrels of tomato catsup which was adulterated. The product was labeled: "L. C. Soper & Co., Long Island Brand Ketchup. Made from tomato pulp, spices, flour, salt. Preserved with approximately ⅕ of 1% benzoate of soda, New York."

Analysis by the Bureau of Chemistry showed the product to contain yeasts and spores 107 per one-sixtieth cmm., bacteria estimated at 180,000,000 per cc., with mold filaments present in 75 per cent of the microscopic fields examined. Adulteration was alleged for the reason that said product consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance; that is to say, tomatoes containing yeasts, spores, bacteria, and molds.

On June 5, 1911, the defendant entered a plea of non vult and sentence was suspended by the court.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 9, 1911.*

7946°—No. 1055—11

F. & D. No. 1640.
S. No. 575. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1056.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED MISBRANDING OF A DRUG PRODUCT—"ANTIKAMNIA TABLETS."

In July, 1910, the United States Attorney for the District of Columbia, acting upon the report by the Secretary of Agriculture, filed in the Supreme Court of the District of Columbia a libel praying condemnation and forfeiture of 100 packages of a drug product called "Antikamnia Tablets" in the possession of the Washington Wholesale Drug Exchange, Washington, D. C.

Examination of samples of this product by the Bureau of Chemistry of the United States Department of Agriculture showed it to contain among other ingredients, acetphenetidin, a derivative of acetanilid. The libel alleged that the product was offered for sale in the District of Columbia and was misbranded in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Misbranding was alleged because the product contained as one of its ingredients acetphenetidin, and the label failed to bear a statement that said ingredient was a derivative of acetanilid, and further because the label was false and misleading in that it bore the statement that the product contained no acetanilid, thereby implying that no quantity or proportion of any derivative of acetanilid was contained therein. Thereupon, the Antikamnia Chemical Co. entered its appearance as owner, excepting and objecting to the allegations of the above libel, and praying that the said libel be dismissed and the product be restored to the claimants.

On November 18, 1910, the cause came on for hearing and the court rendered its opinion sustaining the exceptions of the claimants and ordering the dismissal of the libel.

CLABAUGH, Chief Justice:

Now, gentlemen, in accordance with the views stated to counsel here, the opinion of the court is sought purely as to the question whether or not, under this Food and Drugs Act, it is essential, where any of the drugs, and more particularly in this case, acetanilid, is used,—whether it is essential to place upon the label not only the name of the derivative of the parent drug, but also a further statement upon the label that it is the derivative of the parent drug. That is really the question at issue. In other words, in this case the label bore the name of this acetphenetidin, and was labelled correctly, so far as the amount of it contained in the package is concerned, the only question being whether it ought further to have stated that it is the derivative of acetanilid, or words to that effect, and the question therefore arises whether or not the label in the case contains all that is sufficient under this Act.

Now in this case the Government has libelled the various packages, upon the theory that the law requires, in conjunction with the regulations of the three Secretaries, the further statement of the fact that it is the derivative of this acetanilid.

Now a good deal of the argument in this case was spent upon the question as to whether or not the act in question was a penal statute, or merely a remedial one; that is: was it a quasi-criminal act, or purely a remedial act?

The only question here, in my judgment, is this: Does the act under which these proceedings have been taken, require the statement, where the name of the derivative is given—does that act require the further statement placed upon the label that it is the derivative of some given drug mentioned in this given section of the act; in this case, of acetanilid? Now the act specifies these various drugs that are mentioned in this particular section, and to read that portion of it that is material, it seems to me, the law says: "Or, second: If the package fail to bear a statement on the label of the quantity or proportion of any alcohol * * * or acetanilid, or any derivative, or proportion of any such substance contained therein." Now the act further provides that these three Secretaries shall have the right to make all needful and necessary regulations for the purpose of carrying into effect this act. Now, in that view of the case, the respective secretaries mentioned in the act did provide regulations, which regulations said, among other things, that it was essential for the manufacturers to place upon the label the derivative, and to show not only that it was a derivative, but shall further add to that the drug from which it is a derivative; in other words, the parent thereof. Is it within the scope of the authority of these secretaries, therefore, to add regulations compelling that addition, or is that legislation upon their part, and therefore beyond the scope of their right or authority?

Now I have spent a good deal of time, gentlemen, in considering this case. Everyone, I suppose, at least the general public is disposed to regard this act as of great benefit and use to the public, and it ought to be upheld in every particular, if it is possible so to do. Now briefly stating what is conceded in the brief of the Government, and fairly conceded, and to which there can be no dispute, and that is, that the secretaries cannot add anything to the law, that is, make an addition to an act that has already made its provisions; they cannot provide anything that will become an additional law in the construction of that act. So that it is a pretty narrow question, and one that, it seems to me, is not so much a question of authority, as purely a question of interpretation of this act.

Now conceding, for the purposes of the statement of this case, that this is not a quasi criminal statute, but is purely a remedial one. If that be true,

then it is the duty of the court to so construe it as will give effect to the purposes and objects for which it was passed, and I have no doubt that the secretaries could, with the same propriety, make regulations that would the more effectually carry into execution the purpose and intent of the law makers. That being so, what is the fair construction of the act, and does it not need interpretation? Now the right to interpret an act in conformity with the purposes and object of that act simply means that where the act itself is not perfectly clear, then they can give such an interpretation to it as will carry out and gratify the purposes of its passage.

An interpretation does not, as I understand it, mean that you can add anything to language which is plain. If there is anything about the language of a statute which annuls the purposes of that statute, then you have the right to interpret according to its purposes, if there be the slightest doubt about the words of the act; but if the act is plain, and the words present no difficulty, then, it seems to me, you cannot interpret or put something else in, because, perhaps, it would have been plainer or broader in its effect than the simple words of the act. I do not mean that you have got to indulge in the interpretation of the letter of the law, but the spirit, of course; otherwise we would have a very exceedingly narrow condition concerning the law. We must always interpret by the spirit of the law. What does this law say? Reading it again: "Or, second, if the package fail to bear a statement on the label of the quantity or proportion of any acetanilid, or any derivative or proportion of any such substances contained therein." Now if it fail to state that it is acetanilid, if it fails to state that it is a derivative, that is, the name of anything derived from acetanilid, if it fails to state what the name of that derivative is, then it brings it within the penalties of the act. Now, as I understand it, this label that they have on the packages states the name of the derivative—acetphenetidin is the name of the derivative which is stated upon there—and the amount that is contained in the package is likewise stated. Now what is to suggest that it should go any further? It is argued that the very title of the act implied the demand of something else, and that title is, from the libel by the Government, "An act for preventing the manufacture, sale, transportation of adulterated, or misbranded, or poisonous or deleterious foods, drugs, medicines and liquors, and for regulating the traffic therein, and for other purposes." Now is it for the purpose of preventing the manufacture, sale etc.?

Now that is the purpose of it. It is to protect the community from being imposed upon by packages having one brand, when indeed the contents of them are entirely different from the character of brand that may be imposed upon anybody. It is suggested that it is likewise to prevent the drug habit, as it has been described in the argument, and it is to be gathered from the argument, as I understand, when the act was passed; so that at all events it is done for the protection of society, for the protection of the people, and when we come to the consideration of the act itself, we have the law stating that you shall truly brand, you shall truly label any article that you are selling. Now they are selling this acetphenetidin, and this package is branded as that. Now why, or what there is in the act which would say, or which would require to be stated that this acetphenetidin is the derivative of acetanilid, is certainly not apparent upon the face of either the title or the reasons for the act. When the court cannot assume that the people generally are any more familiar with acetanilid than they would be with this acetphenetidin, how can the court say that, as a matter of law, one may be just as familiar with the statute as the other. The court cannot give its own personal views on the subject, that it knew more about this acetanilid than it did of these derivatives. The purpose

of the act is to state to the person who makes this drug that you must truly state to the people what it is. Now how can they be informed, unless the court takes judicial knowledge of something that it seems to me would be certainly doubtful, to say the least, that the people at large are any more familiar with one thing than the other? Furthermore, I don't see that it adds to it one way or the other, by labelling in this way, as it is suggested.

It would be very much more safe to a community, it seems to me, if the secretaries who have the right to pass regulations for the carrying of this law into effect, had passed an act which said: Wherever the derivative of acetanilid is to be used—either acetanilid or its derivative—either the manufacturer shall place upon the label that it is a poisonous drug, or a dangerous drug, and that it should not be taken in doses of over five grains, say. Now that would effect the purposes of this act in a proper way; it would advise the people at large that acetphenetidin is a dangerous drug; that it ought not to be taken in doses of over five grains, say for illustration. That would give notice to the people that it was a dangerous drug, but would it be contended that under this act the secretaries could force the placing of such a statement upon the label? Surely that would not be for the purpose of carrying into effect an act, but it would be adding legislation to the act, because it would be requiring something that the act did not require. For some reason or the other I would assume that the druggist or manufacturer who put these things up did not feel compelled to put these things on the label. It would be a good thing to protect the people, but unless some such suggestion was made in the act, how can the secretaries, with the authority only to suggest regulations as would carry into effect the act—how can they undertake to say that in addition to what the law says, that he place upon the label from what parent drug it is derived? If they can say that, they can also say: You must put upon that label the statement of the character of the drug. That would manifestly be a positive addition to the law which requires the name of the drug to be placed upon the label, though such action on their part would be very much more effective to advise the people that it is a dangerous drug, than merely to say it is a derivative of acetanilid.

Now when this case was argued—and we are taking the whole argument together—it occurred to me that it was very similar to that decided by the Supreme Court of the United States in 166 U. S., in respect to the importation of stallions. Here, under the act, they were authorized to bring into this country from some place abroad, free of duty, any stallion, if it was for breeding purposes. That was the act. What was the reason of that? The reason was that it would improve the stock in this country. It could have had no other reason. Here you are allowed to bring foreign bred stallions into this country for breeding purposes, and the only reason for that would have been because the foreign-bred stallion was supposed to be better, and would improve the breed of horses in this country. I cannot imagine any other reason. It was not certainly because we wanted more. That would be a useless thing, because we certainly had all of the character of the horse that we needed for breeding purposes, but it was manifestly for the purpose of improving the breed of horse in this country. Now, to carry out that purpose, the Secretary of the Treasury says: Here, inasmuch as this act is passed for the purpose of improving the breed of horse in this country, why we will, in accordance with our rights, make any necessary regulations to carry into effect that statute; we will pass a regulation that before you can bring him in, you must show that the stallion is of superior breed, and they refused to permit a stallion to be brought in until it was shown that it was of a superior character or breed of

horse. Now they refused, therefore, when the party to that cause sought to have this horse brought in without the payment of any duty. The Secretary says no, you have not shown him to be a superior breed, and the result was that it went to the Supreme Court of the United States, and the court says: The Secretary of the Treasury had nothing to do with it. The law says that any stallion could be brought in for breeding purposes; it did not say whether it should be superior or not. And consequently the court held that the Secretary had exceeded his rights; that he had added something to the law.

I have read the other cases, but that case seems to me to put into a nutshell the point of view that I am trying to impress here. I have read all the authorities suggested and some others, but it seems to me that it comes back to the simple question: "Did this act need any interpretation, or was it perfectly plain, and if it needed such interpretation, could that interpretation add anything that Congress required to be done? Now this is the way that question seems to be answered here. I don't think the act needs any interpretation, because it is perfectly plain as to what it said, and evidently as to the purposes for which it was said. Then, from the other standpoint, if they have added anything to the law that should be placed upon that label, they have exceeded their rights. Now, in my opinion, they have added something. * * * Therefore, I think the exceptions in this case ought to be sustained.

From this decision the United States appealed to the Court of Appeals of the District of Columbia, where the judgment of the lower court was affirmed.

The opinion of the Court of Appeals is as follows:

SHEPARD, C. J.

This is an appeal by the United States from a judgment sustaining exceptions to, and dismissing a libel.

The libel prayed the seizure and condemnation of one hundred packages of a certain drug describing the same as follows:

"Twenty packages, more or less, of said drug, labelled and branded as follows: "Antikamnia Tablets, Contain 305 grains of acetphenetidin, U. S. P. per ounce, Guaranteed by the Antikamnia Chemical Company, under the Food and Drugs Act, June 30th, 1906, U. S. Serial Number 10. The Antikamnia Tablets in this original ounce package contain no acetanilid, antifebrin, antipyrin, morphine, opium, codein, heroin, cocaine, alpha or beta eucaine, arsenic, strychnine, chloroform, cannabis indica, or chloral hydrate. Antikamnia Tablets five grains. One ounce Antikamnia Tablets. Manufactured in the United States of America by the Antikamnia Chemical Company St. Louis, U. S. A."

Also seventy other packages, more or less, of said drug, labelled and branded as follows: "Antikamnia and Codein Tablets. Contain 296 grains acetphenetidin, U. S. P. per ounce. Contain 18 grains supl. codein per ounce. Guaranteed by the Antikamnia Chemical Company, under the Food and Drugs Act, June 30th, 1906, U. S. Serial No. 10. The Antikamnia and Codein Tablets in this original ounce package contain no acetanilid, antifebrin, antipyrin, morphine, opium, heroin, cocaine, alpha or beta eucaine, arsenic, strychnine, chloroform, cannabis indica, or chloral hydrate. One ounce Antikamnia and Codein Tablets. Manufactured in the United States of America by the Antikamnia Chemical Company, St. Louis, U. S. A."

Also ten other packages, more or less, of said drug labelled and branded as follows: "Antikamnia and Quinine Tablets. Contain 165 grains acetphenetidin, U. S. P. per ounce. Guaranteed by the Antikamnia Chemical Company, under

the Food and Drugs Act, June 30th, 1906. U. S. Serial No. 10. The Antikamnia and Quinine Tablets in this original ounce package contain no acetanilid, antifebrin, antipyrin, morphine, opium, codein, heroin, cocaine, alpha, or beta eucaine, arsenic, strychnine, chloroform, cannabis indica, or chloral hydrate. One ounce Antikamnia and Quinine Tablets. Manufactured in the United States of America by the Antikamnia Chemical Company of St. Louis, U. S. A."

The libel charges that the packages of said drugs are subject to condemnation as misbranded in violation of the provisions of the Food and Drugs Act, approved June 30th, 1906.

"Because each and all of said packages of drug contain a large quantity and proportion of acetphenetidin, which your libelant charges is a derivative of acetanilid, and that under the provisions of the said Act of Congress and of the regulations lawfully made thereunder, it is provided and required that the label on each of said packages should bear a statement that the acetphenetidin contained therein is a derivative of acetanilid; and yet your libelant charges that each and all of said packages fail to bear a statement in any form that the acetphenetidin contained therein, is a derivative of acetanilid, or that the drug contains any derivative of acetanilid.

"Your libelant further charges that each and all of said packages of drug are further misbranded in that the labels thereon are false and misleading, for the reason that each and all of the said labels bear the statement that no acetanilid is contained therein, and that said statement imports and signifies that there is no quantity or proportion of any derivative of acetanilid contained in said drug."

Under the warrant ordered to issue, the Marshal seized ninety three packages, in all, bearing the labels aforesaid. By leave of the Court, the Antikamnia Chemical Company, alleging itself to be the owner of the packages was permitted to appear as party defendant.

The exceptions on which the libel was dismissed are substantially: That the Act does not require that the label on each of said packages shall have a statement that the acetphenetidin contained therein is a derivative of acetanilide, nor is it necessary under said Act that a derivative of any parent substance should state that it is a derivative of such substance, provided the derivative itself is named by its proper name. That the statement on the packages that it contains no acetanilid is neither false nor misleading, but true, and the libel while charging that acetphenetidin is a derivative of acetanilide, does not charge that there is any acetanilide in acetphenetidin.

Section 1 of the Food and Drugs Act makes it unlawful to manufacture within any territory, or the District of Columbia, an article of Food or Drug which is adulterated or misbranded, "within the meaning of this Act,", and imposes a penalty therefor.

Section 2, prohibits the introduction into any State or territory, or the District of Columbia, and the shipment from the same to any other State territory, etc. or foreign country, any article of food or Drug, in the original packages, adulterated or misbranded within the meaning of this Act, and the sale or offer for sale in the District of Columbia or territories of any such adulterated or misbranded foods or drugs; and provides a penalty therefor.

Section 3, provides: "That the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out the provisions of this Act, including the collection and examination of specimens of foods and drugs.", etc.

Section 4 provides for the examination of foods and drugs, and the giving of notice if found to be adulterated or misbranded.

Section 5 makes it the duty of the District Attorney to whom report shall be made of any violation of the Act, to cause appropriate proceedings to be commenced, without delay, for the enforcement of the penalties provided in the Act.

Section 6 defines the meaning and inclusion of the terms drug and food.

Section 7 declares that for the purposes of this Act an article shall be deemed to be adulterated: "In case of drugs: First: If when a drug is sold under or by a name recognized in the United States Pharmacopœia, or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia, or National Formulary, official at the time of investigation; Provided that, no drug defined in the United States Pharmacopœia, or National Formulary, shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopœia, or National Formulary.

Second, if its strength or purity fall below the professed standard, or quality under which it is sold." (Other portions of the Section relate to Confectionery and Foods.)

Section 8. "That the term 'Misbranded' as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory or Country in which it is manufactured or produced. That for the purposes of this Act an article shall also be deemed to be misbranded: "In case of drugs: First, If it be an imitation of, or offered for sale, under the name of another article. Second, If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such a package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any substances contained therein." (Remainder of Section applies to Foods.)

Section 9 relates to guaranties by wholesalers, jobbers and manufacturers.

Section 10, provides for the seizure and condemnation of adulterated, or misbranded foods, drugs and liquors through proceedings instituted for the purpose, which proceedings "shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of an issue of fact joined in any such case, and all such proceedings shall be at the suit of, and in the name of the United States."

Sections 11, 12 and 13, have no possible bearing on the questions involved.

Acting upon the recommendation of the Commission of experts, the Secretaries of the Treasury, of Agriculture, and of Commerce and Labor, respectively, adopted certain rules and regulations for carrying out the provisions of the foregoing Act, on October 17th, 1906, and published the same.

Regulation 28 was amended to take effect on April 1, 1910. This states the derivatives of the several drugs enumerated in Section 8 and names the several preparations containing them respectively. Derivatives of or from, and preparations containing acetanilide, are enumerated as follows:

Acetanilide (Antifebrine, Phenylacetamide).

Derivatives: Acetphenetidine, citrophen, diacetanilide, lactophenin, methoxyacetanilide, methylacetanilide, para-iodoacetanilide, and phenacetine.

Preparations containing acetanilide or derivatives: Analgesics, antineuralgics, antirheumatics, cachets, capsules, cold remedies, elixirs, granular effervescent salts, headache powders, mixtures, pain remedies, pills and tablets.

The regulation concludes as follows: In declaring the quality or proportion of any of the specified substances the names by which they are designated in the act shall be used, and in declaring the quantity or proportion of the derivatives of any of the specified substances, in addition to the trade name of the derivative, the name of the specified substance, shall also be stated, so as to indicate clearly that the product is a derivative of the particular specified substance.

1. A preliminary contention on behalf of the appellants is, that the Act being remedial and not penal, should be liberally construed. This contention seems to be of little or no practical importance in the present case, as the substantial question presented is one of power rather than construction. Without discussion, therefore, it may be conceded that the Act, while it contains penal provisions without which it could not be enforced, was enacted to remedy the great mischief resulting from the unrestricted sale of adulterated drugs and articles of food and ought to be given, where possible, a construction that will effect the general legislative intention.

2. The substantial questions for determination arise upon two propositions that have been submitted in support of the contention of error in the dismissal of the bill on the exceptions stated. The first of these is: That the packages of the drug are misbranded, because the labels fail to recite that acetphenetidine contained therein is a derivative of acetanilide.

It seems clear that this omission is not in express violation of the requirement of Section 8 of the Act, for the reason that the label states the true name of the drug—acetphenetidine, which, though not one of those specifically named in the Section, is a derivative of one of them—acetanilide.

Now, while persons skilled in chemistry and pharmacy would know that acetphenetidine is a derivative of acetanilide, it is certain that the average purchaser and user of drugs would not. For this reason, no doubt, the Commission of expert chemists, whose recommendations were adopted by the three secretaries, suggested the regulation requiring the label of a derivative of one of the drugs specified in Section 8 to show not only the trade name of the same, but also the name of the substance of which it is a derivative. It is well settled that where an Act of Congress has for its object the raising of revenue, the administration of the affairs committed to an executive department, as of the public lands, and the like, or the execution of the power over commerce, matters of detail looking to the promulgation of regulations for carrying the law into effect, as, for example providing for the proceedings thereunder, the fixing of standards, brands and labels, or the ascertainment of necessary facts upon which the law may operate, may be expressly delegated to an executive officer. In such instances Congress legislates on the subject as far as is reasonably practicable, and from the recognized necessities of the case is compelled to leave to executive officers the duty of bringing about the result pointed out by the Statute. (U. S. *vs.* Bailey, 9 Pet., 239; U. S. *vs.* Caha, 152 U. S., 211; In re Kollock, 165 U. S., 526; Field *vs.* Clark, 143 U. S., 470; Union Bridge Co. *vs.* U. S., 204 U. S., 364; St. L. & I. M. Ry. Co. *vs.* Taylor, 210 U. S., 281; Bong *vs.* Campbell Art Co., 214 U. S., 236; see also Coopersville Co-operative Creamery Co. *vs.* Lemon, 163 Fed. R., 145; Prather *vs.* U. S., 9 App. D. C., 82; Kollock *vs.* U. S., 9 App. D. C., 420.)

On the other hand, it is equally well settled that the power conferred to make regulations for carrying the law into effect must be exercised within the powers

delegated, that is to say, confined to details for regulating the mode of proceeding to carry into effect the law as it has been enacted by Congress. It cannot be extended to amending, or adding to the requirements of the Act itself. (Morrill *vs.* Jones, 106 U. S., 466; U. S. *vs.* Symonds, 120 U. S., 46; U. S. *vs.* Eaton, 144 U. S., 677; Williamson *vs.* U. S., 207 U. S., 425.)

The decisions cited mark the general boundary line between the powers that may be delegated to administrative officers and those that may not be. It remains to determine on which side of that line the power claimed in the present case falls.

It must be borne in mind that the Food and Drugs act does not confer upon executive officers the power to prescribe the forms of brands and labels upon drugs, as was done by the Oleomargarine Act, that was considered in Kollock's Case, supra. The only power conferred is that, in Section 3, which provides that the three Secretaries named, "shall make uniform rules and regulations for the carrying out of the provisions of this Act, including the collection and examination of specimens of food and drugs." etc. * * *

Section 8 declares when an article shall be deemed to be misbranded: "First: If it be an imitation of, or offered for sale under the name of another article." "Second: If (among other things) the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha, or beta eucaine, chloroform, cannabis indica, chloral hydrate, or any derivative or preparation of any such substances contained therein."

In so far as the regulation designates the several derivatives of the drugs enumerated in Section 8, and the preparations containing the same, we are of the opinion that it is within the power conferred in Section 3 to make uniform rules and regulations for carrying out the provisions of the Act. It was not reasonably practicable for Congress to ascertain and declare these several derivatives and preparations, which might then have existed, much less to anticipate those, which might later come into existence and use. Having declared that the quantity or proportion of the several derivatives of the named drugs shall be stated on the labels, the ascertainment of such derivatives was a matter of detail properly confided to the executive officers in carrying out the provisions of the law. The regulation having named acetphenetidine as a derivative of acetanilide, the manufacturer complied therewith to the extent of naming the proportion of said derivative contained in the antikamnia tablets, but did not comply with the requirement of the same that it should also recite that it was, in fact, a derivative of acetanilide The last requirement was, in our opinion, an amendment of, or an addition to the Act itself, and therefore beyond the powers of the Executive authority. Congress reserved to itself the statement of the contents of the labels and did not require that when a drug was a derivative, merely, the name of the drug from which derived should also be recited. Had it intended that this should be done, it would have so declared distinctly. In this respect the case is clearly differentiated from In re Kollock, supra, and comes within the rule governing the second class of cases before recited, including U. S. *vs.* Eaton, 144 U. S., 677–688; and Williamson *vs.* U. S. 207 U. S., 425–462. In the case last cited, the question was whether a false oath made in final proof required by a regulation of the Commissioner of the Land Office constituted perjury. The statute made certain requirements in regard to preliminary proofs and reiterated some of them in the section relating to final proofs, but omitted the one, which by the regulations made by the Commissioner under the power conferred by the Act to give effect to its provisions, was required. It was held that the power to adopt rules and regulations for the enforcement of the Act could not be construed to warrant one that was in fact an addition to the Act.

Since the submission of this case, the Supreme Court of the United States has rendered a decision, the opinion in which, delivered by Mr. Justice Lamar, clearly draws the line between those powers which may be delegated by Congress to an executive officer and those which may not. (U. S. *vs.* Grimaud, May 1, 1911.) That was an indictment for violating a regulation of the Secretary of Agriculture relating to the use and occupancy of public forest reservations. It was said that in the nature of things it was impracticable for Congress to provide regulations for the various and varying details of the management of the forest reservations, and that it was within its power to authorize the Secretary to make such regulations as would secure the objects of such reservation, namely, to regulate the use and occupancy and preserve the forests from destruction. Having so done, it declared that "Any violation of the provisions of this Act, or such rules and regulations shall be punished as provided in Section 5388, R. S., as amended." The violation of such reasonable rules and regulations is "made a crime, not by the Secretary, but by Congress. The statute, not the Secretary, fixes the penalty." It is this feature of the Act that differentiated the case from Williamson *vs.* U. S., supra, and other cases cited, which, in our opinion, furnish the rule of determination for the case at bar. Congress here prescribed what the labels should contain, and conferred no power upon the Secretaries to make a regulation adding anything thereto.

3. The second proposition is this in substance: the statement on the label that the drug "contains no acetanilide," is false and misleading, and constitutes misbranding within meaning of the Act. The libel does not expressly charge that acetphenetidine contains acetanilide. If it did, there would be no doubt of the soundness of the proposition, for the exceptions necessarily admit every fact plainly alleged. But it contains no such allegation. The charges that the labels are false and misleading "for the reason that each and all of said labels bear the statement that no acetanilide is contained therein, and that said statement imports and signifies that there is no quantity or proportion of any derivative of acetanilide contained in said drug." It is argued in support of the proposition that acetphenetidine, necessarily contains some appreciable quantity or proportion of the latter drug; and it is further argued that this is a matter of common knowledge of which the Court may take notice without proof. We cannot agree that it is a matter of common knowledge that a chemical derivative necessarily contains, or is of the same nature as the substance whence it may be derived. It was stated on the argument, without dissent, that very many well known substances, including acetanilide, are derivatives of benzene, or benzol. Some of these derivatives are nocuous, others entirely harmless. While, therefore, acetphenetidine is a chemical derivative of acetanilide, and may be derived therefrom in practice, it is in a general sense a derivative of Benzene or Benzol, and may, for all we know, be derived therefrom in actual practice for commercial use. When one wishes to ascertain the common meaning or signification of a word, resort is ordinarily had to the accredited dictionaries of the language. Murray's English Dictionary defines a chemical derivative thus: "A compound obtained from another, E. G. by partial replacement." The definition of the Standard Dictionary is substantially the same. In the latest edition of Webster's International Dictionary the following definition is given: "A substance so related to another substance by modification or partial substitution as to be regarded as derived from it, even when not obtainable from it in practice." These definitions do not carry us very far. About as far as common knowledge goes is that chemical changes occur in substances through the subtraction or the addition of some particular element. Sometimes the mingling of several substances having chemical af-

finities, but respectively innocuous, may produce a deadly poison. And sometimes the subtraction of an element from a poisonous substance may produce another that is perfectly harmless. The principles that direct these combinations and control the transformations affected are beyond common knowledge. They can only become known through the special study of the science of chemistry.

Whether, then, the addition or subtraction of elements through which acetphenetidin may, in theory or in practice be derived from acetanilide, produces such a chemical change of substance that it may be truly said to contain no acetanilide; or produces a substance which still contains an appreciable quantity or proportion of the same, presents a question of fact, which in our opinion, must be determined on the evidence of witnesses skilled in the science of chemistry.

To authorize the introduction of evidence an issue must be raised in the pleadings.

As before pointed out, the libel does not charge that the statement that the preparation contains no acetanilide is false, by reason of the fact that acetphenetidine does contain acetanilide. It carefully confines itself to the allegation that the statement is false because it does not recite that there is no quantity or proportion of any *derivative of acetanilide* contained therein. This clearly limits the charge of misbranding to the failure to state that acetphenetidine is a derivative of acetanilide. This is but another form of the complaint that the regulation has been violated. It does not raise an issue of fact as to whether acetphenetidine actually contains a perceptible quantity of acetanilide.

In accordance with these conclusions, the judgment will be affirmed.

From this decision an appeal will be taken to the Supreme Court of the United States.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 9, 1911.*

1056

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F. & D. No. 2106.
I. S. Nos. 2828–c, 2829–c, 2830–c, 2831–c,
2832–c, 2833–c, 7933–c, 7934–c,
7935–c, 7936–c, 7937–c, 7938–c.

Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1057.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF EXTRACT OF ALMOND, IMITATION FLAVOR OF BANANA, EXTRACT OF ORANGE, GREEN CAKE COLOR, RED CAKE COLOR, YELLOW CAKE COLOR, IMITATION FLAVOR OF PEACH, IMITATION FLAVOR OF PINEAPPLE, IMITATION FLAVOR OF STRAWBERRY, IMITATION FLAVOR OF RASPBERRY, EXTRACT OF ROSE GERANIUM, AND EXTRACT OF JAMAICA GINGER.

On March 9, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the James H. Forbes Tea & Coffee Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about August 4, 1910, from the State of Missouri into the State of Wyoming of a consignment of food products which were misbranded in the particulars hereinafter stated.

For purposes of identification the labels on the bottles and cartons containing said products, given below, will be designated and hereafter referred to by numbers as follows: I. S. Nos. 2828–c, 2829–c, 2830–c, 2831–c, 2832–c, 2833–c, 7933–c, 7934–c, 7935–c, 7936–c, 7937–c, and 7938–c. The bottles and cartons containing said products were labeled as follows:

I. S. No. 2828–c.—(On bottle) "Moyune Brand Pure Extract of Almond. For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co., Cheyenne, Wyo."; (on carton) "2 ounces Full Measure Moyune Brand Pure Extract of Almond. For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 2829–c.—(On bottle) "Moyune Brand Imitation Flavor of Banana. For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo."; (on carton) "2 ounces Full Measure Moyune Brand Imitation Flavor of Banana. For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed

for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4538. Packed for Moyune Tea Co., Cheyenne, Wyo."

I. S. No. 2830–c.—(On bottle) "Moyune Brand Pure Extract of Orange For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo."; (on carton) "2 ounces Full measure Moyune Brand Pure Extract of Orange For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 2831–c.—(On bottle) "Moyune Brand Green Cake Color For coloring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo."; (on carton) "2 ounces Full Measure Moyune Brand Green Cake Color For coloring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 2832–c.—(On bottle) "Moyune Brand Red Cake Color For coloring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo."; (on carton) "2 ounces Full Measure Moyune Brand Red Cake Color. For coloring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 2833–c.—(On bottle) "Moyune Brand Yellow Cake Color For coloring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo."; (on carton) "2 ounces Full Measure Moyune Brand Yellow Cake Color For coloring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 7933–c.—(On bottle) "Moyune Brand Imitation Flavor of Peach For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. Colored with pure vegetable color"; (on carton) "2 ounces Full Measure Moyune Brand Imitation Flavor of Peach For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co., Cheyenne, Wyo."

I. S. No. 7934–c.—(On bottle) "Moyune Brand Imitation Flavor of Pineapple For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo."; (on carton) "2 ounces Full Measure Moyune Brand Imitation Flavor of Pineapple. For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 7935–c.—(On bottle) "Moyune Brand Imitation Flavor of Strawberry For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. Colored with Pure Vegetable Color"; (on carton) "2 ounces Full Measure Moyune Brand Imitation Flavor of Strawberry For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 7936–c.—(On bottle) "Moyune Brand Imitation Flavor of Raspberry For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. Colored with Pure Vegetable Color"; (on carton) "2 ounces Full Measure Moyune Brand Imitation Flavor of Raspberry For Flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 7937–c.—(On bottle) "Moyune Brand Pure Extract of Rose Geranium For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. Colored with Pure Vegetable Color"; (on carton) "2 ounces Full Measure Moyune Brand Pure Extract of Rose Geranium. For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

I. S. No. 7938–c.—(On bottle) "Moyune Brand Pure Extract of Jamaica Ginger For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo."; (on carton) "2 ounces Full Measure Moyune Brand Pure Extract of Jamaica Ginger For flavoring cakes, sauces, puddings, ice cream, pastry, etc. Packed for Moyune Tea Co. Cheyenne, Wyo. The contents of this package are guaranteed perfectly pure complying with all Pure Food Laws. Serial number 4537. Packed for Moyune Tea Co. Cheyenne, Wyo."

Examinations of samples of said products by the Bureau of Chemistry, United States Department of Agriculture, showed them to be short in measure in the following proportions:

I. S. No. 2828–c, average shortage, 13.5 per cent.
I. S. No. 2829–c, average shortage, 15.5 per cent.
I. S. No. 2830–c, average shortage, 12.0 per cent.
I. S. No. 2831–c, average shortage, 18.0 per cent.
I. S. No. 2832–c, average shortage, 17.0 per cent.
I. S. No. 2833–c, average shortage, 22.0 per cent.
I. S. No. 7933–c, average shortage, 9.5 per cent.
I. S. No. 7934–c, average shortage, 13.0 per cent.
I. S. No. 7935–c, average shortage, 6.5 per cent.
I. S. No. 7936–c, average shortage, 11.0 per cent.
I. S. No. 7937–c, average shortage, 10.5 per cent.
I. S. No. 7938–c, average shortage, 13.0 per cent.

Analyses of said samples by said Bureau of Chemistry showed samples I. S. Nos. 7933–c, 7935–c, 7936–c, and 7937–c to be colored with coal-tar dyes.

The information filed against the aforesaid defendant corporation alleged, in twelve counts, the misbranding of each of the aforesaid products for the reason that the labels on the cartons in which each of said products was packed represented the bottles containing said products as being "2 ounces Full Measure" of said product; when, in fact, the bottles containing said product were in each case short and deficient in measure, as shown by the aforesaid examinations.

Misbranding was also alleged against the products I. S. Nos. 7933–c, 7935–c, 7936–c, and 7937–c in four other counts in said information for the reason that, in addition to being short measure, as aforesaid, the labels on the bottles containing said products, as designated above, represented them as being "colored with pure vegetable color," which representation was false and misleading because said products were not so colored, but on the contrary were colored with a mineral color, to wit, coal-tar dye, as shown by the aforesaid analyses.

On June 3, 1911, the defendant corporation pleaded guilty and was fined $1 on each of the twelve counts charging deficiency in measure, and $5 on each of the four counts charging coloring with coal-tar dye, or a total of $32 in fines, together with the costs of the prosecution.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 11, 1911.*

1057

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F. & D. No. 783.
I. S. No. 40. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1058.

(SUPPLEMENT TO NOTICE OF JUDGMENT NO. 266.)

ALLEGED MISBRANDING OF A DRUG—"DR. JOHNSON'S MILD COMBINATION TREATMENT FOR CANCER."

At the November term of the District Court of the United States for the Western District of Missouri the Grand Jury, sitting for said district, returned an indictment against O. A. Johnson, doing business under the name of The Dr. Johnson Remedy Company, charging the shipment by him, on May 13, 1908, from the State of Missouri into the District of Columbia, of several packages of drugs, all of which packages formed and constituted what was termed in substance "Dr. Johnson's Mild Combination Treatment for Cancer," which were alleged to be misbranded in violation of the Food and Drugs Act of June 30, 1906, because said drugs bore false and misleading statements as to their therapeutic value in the treatment and cure of cancer. The facts of the case are set out fully in Notice of Judgment No. 266.

On June 8, 1910, the court entered an order quashing the above indictment. Thereupon the United States instituted proceedings for a writ of error to the Supreme Court of the United States. On May 29, 1911, the order of the trial court quashing the indictment was sustained. The opinion of the Supreme Court follows:

SUPREME COURT OF THE UNITED STATES.

No. 433.—October Term, 1910.

THE UNITED STATES, PLAINTIFF in Error, *vs.* O. A. JOHNSON.	In Error to the District Court of the United States for the Western District of Missouri.

(May 29, 1911.)

Mr. Justice HOLMES delivered the opinion of the Court.

This is an indictment for delivering for shipment from Missouri to Washington, D. C., packages and bottles of medicine bearing labels that stated or implied that the contents were effective in curing can-

cer, the defendant well knowing that such representations were false. On motion of the defendant the District Judge quashed the indictment (177 Fed. Rep. 313), and the United States brought this writ of error under the Act of March 2, 1907, c. 2564, 34 Stat. 1246.

The question is whether the articles were misbranded within the meaning of section 2 of the Food and Drugs Act of June 30, 1906, c. 3915, 34 Stat. 768, making the delivery of misbranded drugs for shipment to any other State or Territory or the District of Columbia a punishable offense. By section 6 the term drug includes any substance or mixture intended to be used for the cure, mitigation or prevention of disease. By section 8 the term misbranded "shall apply to all drugs, or articles of food, . . . the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced. . . . An article shall also be deemed to be misbranded: In case of drugs: First. If it be an imitation of or offered for sale under the name of another article. Second. (In case of a substitution of contents,) or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein."

It is a postulate, as the case comes before us, that in a certain sense the statement on the label was false, or, at least, misleading. What we have to decide is whether such misleading statements are aimed at and hit by the words of the Act. It seems to us that the words used convey to an ear trained to the usages of English speech a different aim; and although the meaning of a sentence is to be felt rather than to be proved, generally and here the impression may be strengthened by argument, as we shall try to show.

We lay on one side as quite unfounded the argument that the words 'statement which shall be misleading in any particular' as used in the statute do not apply to drugs at all—that the statements referred to are those 'regarding such article,' and that 'article' means article of food, mentioned by the side of drugs at the beginning of the section. It is enough to say that the beginning of the sentence makes such a reading impossible, and that article expressly includes drugs a few lines further on in what we have quoted, not to speak of the reason of the thing. But we are of opinion that the phrase is aimed not at all possible false statements, but only at such as determine the identity of the article, possibly including its strength.

quality and purity, dealt with in section 7. In support of our interpretation the first thing to be noticed is the second branch of the sentence: 'Or the ingredients or substances contained therein.' One may say with some confidence that in idiomatic English this half, at least, is confined to identity, and means a false statement as to what the ingredients are. Logically it might mean more, but idiomatically it does not. But if the false statement referred to is a misstatement of identity as applied to a part of its objects, idiom and logic unite in giving it the same limit when applied to the other branch, the article, whether simple or one that the ingredients compose. Again, it is to be noticed that the cases of misbranding, specifically mentioned and following the general words that we have construed, are all cases analogous to the statement of identity and not at all to inflated or false commendation of wares. The first is a false statement as to the country where the article is manufactured or produced; a matter quite unnecessary to specify if the preceding words had a universal scope, yet added as not being within them. The next case is that of imitation and taking the name of another article, of which the same may be said, and so of the next, a substitution of contents. The last is breach of an affirmative requirement to disclose the proportion of alcohol and certain other noxious ingredients in the package—again a matter of plain past history concerning the nature and amount of the poisons employed, not an estimate or prophecy concerning their effect. In further confirmation, it should be noticed that although the indictment alleges a wilful fraud, the shipment is punished by the statute if the article is misbranded, and that the article may be misbranded without any conscious fraud at all. It was natural enough to throw this risk on shippers with regard to the identity of their wares, but a very different and unlikely step to make them answerable for mistaken praise. It should be noticed still further that by section 4 the determination whether an article is misbranded is left to the Bureau of Chemistry of the Department of Agriculture, which is most natural if the question concerns ingredients and kind, but hardly so as to medical effects.

To avoid misunderstanding we should add that, for the purposes of this case, at least, we assume that a label might be of such a nature as to import a statement concerning identity, within the statute, although in form only a commendation of the supposed drug. It may be that a label in such form would exclude certain substances so plainly to all common understanding as to amount to an implied statement of what the contents of the package were not; and it may be that such a negation might fall within the prohibitions of the act. It may be, we express no opinion upon that matter, that if the present indictment had alleged that the contents of the bottles were water, the label so distinctly implied that they were other than water, as

to be a false statement of fact concerning their nature and kind. But such a statement as to contents, undescribed and unknown, is shown to be false only in its commendatory and prophetic aspect, and as such is not within the act.

In view of what we have said by way of simple interpretation we think it unnecessary to go into considerations of wider scope. We shall say nothing as to the limits of constitutional power, and but a word as to what Congress was likely to attempt. It was much more likely to regulate commerce in food and drugs with reference to plain matter of fact, so that food and drugs should be what they professed to be, when the kind was stated, than to distort the uses of its constitutional power to establishing criteria in regions where opinions are far apart. See School of Magnetic Healing v. McAnnulty, 187 U. S. 94. As we have said above, the reference of the question of misbranding to the Bureau of Chemistry for determination confirms what would have been our expectation and what is our understanding of the words immediately in point.

Judgment affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 433.—October Term, 1910.

THE UNITED STATES, PLAINTIFF IN ERROR, *vs.* O. A. JOHNSON. | In error to the District Court of the United States for the Western District of Missouri.

(May 29, 1911.)

Mr. Justice HUGHES dissenting:

I am unable to concur in the judgment in this case, for the following reasons:

The defendant was charged with delivering for shipment in interstate commerce certain packages and bottles of drugs alleged to have been misbranded in violation of the Food and Drugs Act of June 30, 1906, chapter 3915, 34 Stat. 768.

The articles were labeled respectively "Cancerine tablets," "Antiseptic tablets," "Blood purifier," "Special No. 4," "Cancerine No. 17," and "Cancerine No. 1,"—the whole constituting what was termed in substance "Dr. Johnson's Mild Combination Treatment for Cancer." There were several counts in the indictment with respect to the different articles. The labels contained the words "Guaranteed under the Pure Food and Drugs Act, June 30, 1906;" and some of the further statements were as follows:

"Blood Purifier. This is an effective tonic and alterative. It enters the circulation at once, utterly destroying and removing im-

purities from the blood and entire system. Acts on the bowels, kidneys, and skin, eliminating poisons from the system, and when taken in connection with the Mild Combination Treatment gives splendid results in the treatment of cancer and other malignant diseases. I always advise that the Blood Purifier be continued some little time after the cancer has been killed and removed and the sore healed.

"Special No. 4. . . . It has a strong stimulative and absorptive power; will remove swelling, arrest development, restore circulation, and remove pain. Is indicated in all cases of malignancy where there is a tendency of the disease to spread, and where there is considerable hardness surrounding the sore. Applied thoroughly to a lump or to an enlarged gland will cause it to soften, become smaller, and be absorbed.

" Cancerine No. 1. . . . Tendency is to convert the sore from an unhealthy to a healthy condition and promote healing. Also it destroys and removes dead and unhealthy tissue."

In each case the indictment alleged that the article was " wholly worthless," as the defendant well knew.

In quashing the indictment the District Court construed the statute. The substance of the decision is found in the following words of the opinion: " Having regard to the intendment of the whole act, which is to protect the public health against adulterated, poisonous, and deleterious food, drugs, etc., the labeling or branding of the bottle or container, as to the quantity or composition of ' the ingredients or substances contained therein which shall be false or misleading,' by no possible construction can be extended to an inquiry as to whether or not the prescription be efficacious or worthless to effect the remedy claimed for it." And the question on this writ of error is whether or not this construction is correct. United States v. Keitel, 211 U. S. 370.

What then is the true meaning of the statute?

Section 8 provides:

" Sec. 8. That the term ' misbranded,' as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced."

The words " such article " in this section, as is shown by the immediate context, refer to " drugs " as well as to " food."

" Drugs " are thus defined in section 6:

" Sec 6. That the term ' drug,' as used in this Act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and

any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals."

Articles, then, intended to be used for curative purposes, such as those described in the indictment, are within the statute, though they are not recognized in the United States Pharmacopoeia or the National Formulary. And the offense of misbranding is committed if the package or label of such an article bears any statement regarding it "which shall be false or misleading in any particular."

But it is said that these words refer only to false statements which fix the identity of the article. According to the construction placed upon the statute by the court below in quashing the indictment, if one puts upon the market, in interstate commerce, tablets of inert matter or a liquid wholly worthless for any curative purpose as he well knows, with the label "Cancer Cure" or "Remedy for Epilepsy," he is not guilty of an offense, for in the sense attributed by that construction to the words of the statute he has not made a statement regarding the article which is false or misleading in any particular.

I fail to find a sufficient warrant for this limitation, and on the contrary, it seems to me to be opposed to the intent of Congress and to deprive the act of a very salutary effect.

It is strongly stated that the clause in section 8,—"or the ingredients or substances contained therein,"—has reference to identity and that this controls the interpretation of the entire provision. This, in my judgment, is to ascribe an altogether undue weight to the wording of the clause and to overlook the context. The clause, it will be observed, is disjunctive. If Congress had intended to restrict the offense to misstatements as to identity, it could easily have said so. But it did not say so. To a draftsman with such a purpose the language used would not naturally occur. Indeed, as will presently be shown, Congress refused, with the question up, so to limit the statute.

Let us look at the context. In the very next sentence, the section provides (referring to drugs) that an article shall "also" be deemed to be misbranded if it be "an imitation of or offered for sale under the name of another article," or in case of substitution of contents or of failure to disclose the quantity or proportion of certain specified ingredients, if present, such as alcohol, morphine, opium, cocaine, etc.

It is a matter of common knowledge that the "substances" or "mixtures of substances" which are embraced in the act, although not recognized by the United States Pharmacopoeia or National Formulary, are sold under trade names without any disclosure of constituents, save to the extent necessary to meet the specific require-

ments of the statute. Are the provisions of the section to which we have referred, introduced by the word "also," and the one relating to the place of manufacture, the only provisions as to descriptive statements which are intended to apply to these medicinal preparations? Was it supposed that with respect to this large class of compositions, nothing being said as to ingredients except as specifically required, there could be, within the meaning of the act, no false or misleading statement in any particular? If false and misleading statements regarding such articles were put upon their labels, was it not the intent of Congress to reach them? And was it not for this very purpose that the general language of section 8 was used?

The legislative history of the section would seem to negative the contention that Congress intended to limit the provision to statements as to identity. The provision in question as to misbranding, as it stood in the original bill in the Senate (then section 9) was as follows:

"If the package containing it, or its label, shall bear any statement regarding the ingredients or the substances contained therein, which statement shall be false or misleading in any particular."

The question arose upon this language whether or not it should be taken as limited strictly to statements with respect to identity. It was insisted that the words had a broader range and the effort was made to procure an amendment which should be so specific as to afford no basis for the conclusion that anything but false statements as to identity or constituents was intended. An amendment was then adopted in the Senate making the provision read:

"any statement as to the constituent ingredients, or the substances contained therein, which statement shall be false or misleading in any particular."

With this amendment the bill was passed by the Senate and went to the House. There the provision was changed by striking out the word "constituent" and inserting the word "regarding," so that it should read:

"any statement regarding the ingredients or substances contained in such article, which statement shall be false or misleading in any particular."

Finally, it appears, that in conference the bill was amended by inserting the words "design, or device," and also the words "such article, or;" and thus the section became a part of the law in its present form—containing the words:

"any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular."

It is difficult to suppose that, with the question distinctly raised, Congress would have rejected the provision of the Senate bill and

broadened the language in the manner stated if it had been intended to confine the prohibition to false statements as to identity. Reading the act with the sole purpose of giving effect to the intent of Congress, I cannot escape the conclusion that it was designed to cover false and misleading statements of fact on the packages or labels of articles intended for curative purposes, although the statements relate to curative properties.

It is, of course, true, that when Congress used the words " false or misleading statement " it referred to a well defined category in the law and must be taken to have intended statements of fact and not mere expressions of opinion.

The argument is that the curative properties of articles purveyed as medicinal preparations are matters of opinion, and the contrariety of views among medical practitioners, and the conflict between the schools of medicine, are impressively described. But, granting the wide domain of opinion, and allowing the broadest range to the conflict of medical views, there still remains a field in which statements as to curative properties are downright falsehoods and in no sense expressions of judgment. This field I believe this statute covers.

The construction which the District Court has placed upon this statute is that it cannot be extended to any case where the substance labeled as a cure, with a description of curative properties, is " wholly worthless " and is known by the defendant to be such. That is the charge of the indictment.

The question then is whether, if an article is shipped in interstate commerce, bearing on its label a representation that it is a cure for a given disease, when on a showing of the facts there would be a unanimous agreement that it was absolutely worthless and an out and out cheat, the act of Congress can be said to apply to it. To my mind the answer appears clear. One or two hypothetical illustrations have been given above. Others may readily be suggested. The records of actual prosecutions, to which I am about to refer, show the operation the statute has had and I know of no reason why this should be denied to it in the future.

Our attention has been called to the construction which was immediately placed upon the enactment by the officers charged with its enforcement in the Department of Justice and the Department of Agriculture. It is true that the statute is a recent one, and, of course, the question is one for judicial decision. But it is not amiss to note that the natural meaning of the words used in the statute, reflected in the refusal of Congress to adopt a narrower provision, was the meaning promptly attributed to it in the proceedings that were taken to enforce the law. And this appears to have been acquiesced in by the defendants in many prosecutions in which the defendants

pleaded guilty. We have been referred to the records of the Department of Agriculture showing nearly thirty cases in which either goods had been seized and no defense made, or pleas of guilty had been entered. Among these are found such cases as the following:

"No. 29. Hancock's Liquid Sulphur, falsely represented, among other things, to be 'Nature's Greatest Germicide. . . The Great Cure for . . Diphtheria.' Investigation begun November 22, 1907. Plea of guilty."

"No. 180. Gowan's Pneumonia Cure, falsely represented, among other things, that it 'Supplies an easily absorbed food for the lungs that quickly effects a permanent cure.' Investigation begun November 22, 1907. Criminal information. Plea of guilty.

"No. 181. 'Eyelin,' falsely represented, among other things, that it 'Repairs and Rejuvenates the Eye and Sight.' Investigation begun February 13, 1908. Plea of guilty."

"No. 261. 'Sure Thing Tonic,' falsely represented, among other things, to be 'Sure Thing Tonic. . . . Restores Nerve Energy. Renews Vital Force.' Investigation begun June 3, 1909. Pleaded guilty."

"No. 424. 'Tuckahoe Lithia Water,' falsely represented, among other things, to be 'a sure solvent for calculi, either of the kidneys or liver, especially indicated in all diseases due to uric diathesis, such as gout, rheumatism, gravel stone, incipient diabetes, Bright's Disease, inflamed bladder, eczema, stomach, nervous, and malarial disorders.' Investigation begun July 9, 1908. Plea of guilty."

"No. 427. 'Cancerine,' falsely represented, among other things, to be 'A remarkable curative extract which if faithfully adhered to will entirely eradicate cancerous poison from the system. . . A specific cure for cancer in all its forms.' Investigation begun about April 12, 1909. Criminal information. Plea of guilty."

I find nothing in the language of the statute which requires the conclusion that these persons who have confessed their guilt in making false and misleading statements on their labels should be privileged to conduct their interstate traffic in their so-called medicines, admittedly worthless, because Congress did not intend to reach them.

Nor does it seem to me that any serious question arises in this case as to the power of Congress. I take it to be conceded that misbranding may cover statements as to strength, quality and purity. But so long as the statement is not as to matter of opinion, but consists of a false representation of fact—in labeling the article as a cure when it is nothing of the sort from any point of view, but wholly worthless—there would appear to be no basis for a constitutional distinction. It is none the less descriptive—and falsely descriptive—of the article. Why should not worthless stuff, purveyed under false labels as cures,

be made contraband of interstate commerce,—as well as lottery tickets? Champion v. Ames, 188 U. S. 331.

I entirely agree that in any case brought under the act for misbranding,—by a false or misleading statement as to curative properties of an article,—it would be the duty of the court to direct an acquittal when it appeared that the statement concerned a matter of opinion. Conviction would stand only where it had been shown that, apart from any question of opinion, the so-called remedy was absolutely worthless and hence the label demonstrably false; but in such case it seems to me to be fully authorized by the statute.

Accordingly, I reach the conclusion that the court below erred in the construction that it gave the statute, and hence in quashing the indictment, and that the judgment should be reversed.

I am authorized to say that Mr. Justice Harlan and Mr. Justice Day concur in this dissent.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *June 26, 1911.*

1058

O

F. & D. No. 1535.
S. No. 550. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1059.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF VINEGAR.

On May 25, 1910, the United States Attorney for the Eastern District of Wisconsin, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 50 barrels of vinegar, in the possession of the Zinke Mercantile Co., Fond du Lac, Wis. The said barrels were labeled: "Manufactured 4–30–9. Gals. 51—Established 1875—B. T. Chandler & Son, Chicago, Ill.—Dayton, O.—Manufacturers and wholesale dealers in High Grade Fermented Apple Cider Vinegar. We Guarantee our Apple Cider Vinegar to be 40 grains in strength, to weigh 2% in solids, and to contain no coloring matter, acids, or any added foreign substances of any kind, and to meet the requirements of the Pure Food Laws of all States."

Analysis of a sample of said product by the Bureau of Chemistry of the United States Department of Agriculture showed the following results:

Solids	0.34
Nonsugar solids	.26
Reducing sugar invert	.08
Per cent sugar in solids—per cent	23.53
Polarization direct temp. (°C)	+.30
Ash	.09
Alkalinity soluble ash (cc N/10 acid 100 cc)	4.80
Soluble phosphoric acid (mgs. per 100 cc)	.70
Insoluble phos. acid (mgs. per 100 cc)	2.90
Acid, as acetic	3.90
Volatile acid as acetic	3.90
Fixed acid, as malic	Trace.
Lead precipitate	Very slight amount.
Color degrees (brewer's scale 0.5 in)	3.50
Color removed by Fuller's earth—per cent	44.00
Ratio of soluble to total P_2O_5—per cent	19.45
Ratio of ash to nonsugar solids	1:3

The libel alleged that the vinegar, after transportation from Illinois into Wisconsin, remained in the original unbroken packages, and was adulterated and misbranded, in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Adulteration was alleged for the reason that another substance, to wit, distilled vinegar, as shown by the above analysis, had been substituted wholly or in part for the real article. Misbranding was alleged for the reason that the aforesaid label represented the article to be a high grade fermented apple cider vinegar, when in fact it was a distilled vinegar and the label was therefore false and misleading, and calculated to deceive and mislead the purchaser.

On February 15, 1911, proofs were taken, and it appearing from the marshal's report that he had seized 40 barrels of said vinegar, a decree of condemnation and sale of said vinegar was ordered by the court. Thereupon the vinegar was sold by the marshal for the sum of $39.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 12, 1911.*

1059

O

F. & D. No. 2485.
I. S. No. 10127–c. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1060.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF APPLE CIDER VINEGAR.

On May 13, 1911, the United States Attorney for the Eastern District of Michigan, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district, against the Oakland Vinegar & Pickle Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about October 7, 1910, from the State of Michigan into the State of Minnesota, of 100 barrels of so-called cider vinegar. The product was labeled: "Winston Harper Fisher Co., Apple Cider Vinegar, 48 Gals. Minneapolis, Minnesota, Oakland Vinegar & Pickle Co., Fermented Pure Cider Vinegar, 48 Gals, Saginaw, Mich., Reg. U. S. Pat. Off."

Analysis by the Bureau of Chemistry showed the following results:

Solids		1.73
Reducing sugars direct		.63
Reducing sugars invert		.66
Polarization direct		—1.60
Ash		.32
Water insoluble ash		.03
Alkalinity of water-soluble ash	cc	33.40
Water-soluble P_2O_5	mg	16.30
Water insoluble P_2O_5	mg	8.40
Total acid as acetic		4.55
Fixed acid as malic		.016
Pentosans		.10
Alcoholic precipitate		.13
Glycerol		.17
Color		6.00

Adulteration was alleged for the reason that said vinegar was not a straight apple cider vinegar, as represented on the label, but a substitution therefor, in part, of a dilute acetic acid or distilled vinegar,

and foreign material high in reducing sugars, and added mineral substances, as shown by the aforesaid analysis. Misbranding was alleged for the reason that the words "Apple Cider Vinegar", appearing on the labels, were false and misleading, and calculated to deceive and mislead the purchaser into the belief that said product was a pure apple cider vinegar, when as a matter of fact, as shown by said analysis, the product consisted of a mixture of dilute acetic acid, or distilled vinegar, and foreign materials high in reducing sugars, and added mineral substances, in imitation of genuine cider vinegar.

On June 1, 1911, the defendant company, by its treasurer, filed a plea of nolo contendere, and was fined $2.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 14, 1911.*

1060

O

F. & D. No. 2587.
S. No. 921. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1061.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED ADULTERATION AND MISBRANDING OF EXTRACT OF VANILLA.

On April 8, 1911, the United States Attorney for the District of Massachusetts, acting upon the report by the Secretary of Agriculture, filed a libel for seizure and condemnation, in the District Court of the United States, against two barrels of extract of vanilla in the possession of the Metropolitan Steamship Co., Boston, Mass., alleging shipment by the Righter Manufacturing Co., of New York, and that the product remained in original and unbroken packages, and charging adulteration and misbranding of the product in violation of the Food and Drugs Act.

Examination by the Bureau of Chemistry of the United States Department of Agriculture showed the product to have the following composition: Coumarin, large amount; caramel, large amount; resins, absent; lead acetate precipitate, none. Adulteration was charged for the reason that the product had been mixed and colored in a manner whereby its inferiority was concealed. Misbranding was alleged because the product was an imitation of true extract of vanilla.

On April 26, 1911, at the hearing the court sustained the misbranding charge as set forth in the libel and ordered that said product be delivered to the claimant upon the payment of the costs of the proceedings and the execution and delivery of a good and sufficient bond to the effect that said merchandise should not be disposed of or sold contrary to law.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 14, 1911.*

7215°—No. 1061—11

F. & D. No. 879.
I. S. No. 19659-a. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1062.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF OLIVE OIL.

On March 4, 1911, the United States Attorney for the Eastern District of Louisiana, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Cusimano & Tujague Co. and Jacob Cusimano, Albert J. Cusimano, and Leon Tujague, composing said company, alleging shipment, in violation of the Food and Drugs Act, on or about March 27, 1909, from the State of Louisiana into the State of Florida of a quantity of olive oil which was adulterated and misbranded. The product was labeled: "Olio Finissimo D'Oliva Vergine Re D Italia Brand—Olive Oil & Salad Oil—The Original contents of this case a Blend."

Examination by the Bureau of Chemistry of this Department of a sample of this product showed the same to contain 57 per cent cottonseed oil. Adulteration was alleged for the reason that cottonseed oil had been substituted in part for the pure olive oil, and because cottonseed oil had been mixed and packed with said olive oil so as to reduce and lower and injuriously affect its quality and strength. Misbranding was alleged because the label on the product was false and misleading, in that it represented the product to be pure virgin olive oil, whereas, in truth and in fact, it was not pure virgin olive oil, but a mixture of olive oil and cottonseed oil.

On April 1, 1911, the defendant pleaded guilty and the court imposed a joint fine of $10 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 14, 1911.*

7215°—No. 1062—11

F. & D. No. 2444.
I. S. Nos. 8080–c, 8082–c, 8083–c. Issued September 27, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1063.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF LAUDANUM, SWEET SPIRITS OF NITRE, AND SUN CHOLERA MIXTURE.

On April 8, 1911, the United States Attorney for the District of New Jersey, acting upon the report of the Secretary of Agriculture, filed an information in the District Court of the United States for said district against the Merchants' Drug Corporation, alleging shipment by it, in violation of the Food and Drugs Act, on September 16, 1910, from the State of New Jersey into the State of Massachusetts, of a consignment of drug products which were adulterated and misbranded. The labels on the aforesaid products, which, for purposes of identification, are numbered I. S. 8080–c, 8082–c, and 8083–c, were as follows:

I. S. No. 8080–c.—"M. D. C. Blue Flag Trade Mark. Sweet Spirits Nitre. Dose * * * Price 10 c. Alcohol 30%, Ethyl Nitrite, 19 min. to ounce. Guaranteed by Merchants Drug Corp. Westfield, N. J. Under the Food and Drugs Act of June 30, 1906. Serial No. 17110–A."

I. S. No. 8082–c.—"Laudanum Poison, Alcohol 48%, Opium 45.6 gr. opium in fld. oz. One year old, 4 drops, four years old, * * * Guaranteed by Merchants Drug Corporation under the Food and Drugs Act, June 30, 1906. No. 17110 A. Merchants Drug Corporation, Westfield, N. J."

I. S. No. 8083–c.—"Sun Cholera Mixture. From 15 to 30 drops in a little sweetened water repeated every half hour. Should not be given to children. Guaranteed by Merchants' Drug Corporation under the Food and Drugs Act, June 30, 1906. No. 17110–a. Merchants' Drug Corporation, Westfield, N. J."

Analysis of samples of the aforesaid products by the Bureau of Chemistry, United States Department of Agriculture, showed the "sweet spirits nitre" to contain ethyl nitrite, 0.12 per cent; alcohol, 51.4 per cent by volume and 43.94 per cent by weight; the "laudanum" to contain 0.914 gm. of pure morphin in 100 c. c., equivalent to 34.7 grs. of opium per fluid ounce, assuming the opium to contain 12 per cent of morphin; alcohol, 43.5 per cent by volume; and the "Sun Cholera Mixture" was found to be a hydro-alcoholic solution of opium, camphor, capsicum, oil of peppermint, rhubarb, and glycerin; alcohol, 66 per cent by volume; opium (12 per cent), 6.8 grains per fluid ounce. Misbranding was alleged against Sweet Spirits Nitre for the reason that the content of ethyl nitrite as stated on the label was false as shown by the above analysis. Adulteration and misbranding were alleged against the laudanum for the reason that the label thereon represented it to contain 45.6 grains (meaning 45.6 per cent grains) opium per fluid ounce, when in fact it contained but 34.7 per cent grains per fluid ounce, whereby its strength and purity fell below the professed standard under which it was sold. Misbranding was alleged of the "Sun Cholera Mixture" for the reason that the said product contained alcohol and opium and the label thereon failed to contain any statement of the quantity or proportion of alcohol or opium contained in said product.

On May 29, 1911, the defendant pleaded non vult and was fined $100.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 15, 1911.*

1063

F. & D. No. 2350.
I. S. No. 10508–c. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1064.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO PULP.

On March 31, 1911, the United States Attorney for the District of New Jersey, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against B. S. Ayars & Sons Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on July 12, 1910, from the State of New Jersey into the State of New York, of a quantity of tomato pulp which was adulterated. The label on the cases containing said product bore the statement "Emerson Brand Tomato Pulp, Packed by B. S. Ayars & Sons Company, Bridgeton, New Jersey."

Analysis made by the Bureau of Chemistry of the United States Department of Agriculture of a sample of this product showed the following results: Mold filaments present in about one-tenth of all microscopic fields examined; yeasts and spores about 500 per one-sixtieth cmm.; bacteria about 25,000,000 per cc. Adulteration was alleged for the reason that said product consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance, as shown by the aforesaid analysis.

On May 1, 1911, the defendant pleaded non vult and sentence was suspended by the court.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 15, 1911.*

F. & D. No. 2397.
I. S. No. 3375–c. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1065.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO PASTE.

On April 17, 1911, the United States Attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed an information in the District Court of the United States for said district against Pietro Roncoroni Co., a corporation, alleging the shipment by it, in violation of the Food and Drugs Act, on or about November 2, 1910, from the State of New Jersey into the State of New York of 150 packages of a product denominated "tomato paste." The label on these packages was as follows: "Tomato Paste Conserva Di Tomato Rossa. Guaranteed under the Food and Drugs Act, June 30, 1906. This article is guaranteed to be made from the best quality of red ripe tomatoes and to contain no artificial coloring. After many years of experimenting I have succeeded in making this brand the best on the market. Manufactured by Pietro Roncoroni Co. at Cannery Fogg & Hires. Pietro Roncoroni Co. of New York, N. Y."

Analysis of a sample of this product made by the Bureau of Chemistry, United States Department of Agriculture, showed it to contain yeasts and spores, 260 per one-sixtieth milligram, with numerous bacteria, estimated at 500,000,000 per gram, mold filaments being present in 72 per cent of the microscopic fields examined, and decayed tissue visible to the naked eye. Adulteration was alleged for the reason that the said product, as shown by the aforesaid analysis, consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance.

On May 1, 1911, the defendant pleaded non vult and sentence was suspended by the court.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 15, 1911.*

F. & D. No. 1957.
I. S. No. 1144–b. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1066.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF PAPRIKA.

On December 9, 1910, the United States Attorney for the District of New Jersey, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district, against the Atlantic & Pacific Tea Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about December 7, 1909, from the State of New Jersey into the State of Georgia, of a consignment of a certain product denominated "Paprika" which was adulterated and misbranded. The product was labeled: "A. & P. Paprika, packed by the great Atlantic & Pacific Tea Co., New York. Label Guar. Serial No. 9244."

Analysis made by the Bureau of Chemistry of the United States Department of Agriculture of a sample of said product showed it to contain added oil. Adulteration was alleged for the reason that a substance, to wit, oil, had been substituted wholly or in part for the paprika, and was mixed with it so as to conceal the inferiority of the article. Misbranding was alleged for the reason that the name "A. & P. Paprika" was false and misleading, and calculated to mislead and deceive the purchaser, in that it represented the article to consist of paprika when in fact there had been added or packed with said article a foreign oil.

On May 29, 1911, the defendant corporation entered a plea of non vult, and a fine of $50 was imposed against it.

James Wilson,
Secretary of Agriculture.

Washington, D. C., *August 15, 1911.*

7214°—No. 1066—11

F. & D. No. 2375.
I. S. Nos. 3611–c, 3613–c, 3614–c, and 3615–c. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1067.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF MINCEMEAT.

The United States Attorney for the Middle District of Pennsylvania, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district at the February term of court, against W. H. Brenneman, alleging shipment by him, in violation of the Food and Drugs Act, on or about September 17 and October 7 and 12, 1910, from the State of Pennsylvania into the State of New York of a quantity of mincemeat which was adulterated. The product was labeled: "Hertzler's Celebrated Mince Meat. Manufactured by W. H. Brenneman, 12th and Hamilton Sts., Harrisburg, Pa."

Analyses of samples from each consignment of the aforesaid product by the Bureau of Chemistry, United States Department of Agriculture, showed the product in each consignment to contain salicylic acid. Adulteration of the product in each consignment was alleged for the reason that each contained an added deleterious ingredient, to wit, salicylic acid, which rendered them injurious to health.

On May 1, 1911, the defendant pleaded guilty and was fined $25 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 15, 1911.*

7214°—No. 1067—11

F. & D. No. 1529.
I. S. No. 3487-b.
Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1068.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF "KOPP'S BABY'S FRIEND."

The United States Attorney for the Middle District of Pennsylvania, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district, at the October term thereof, against Mrs. J. A. Kopp, alleging shipment by her, in violation of the Food and Drugs Act, on or about January 27, 1910, from the State of Pennsylvania into the State of New York of a consignment of a drug denominated "Kopp's Baby's Friend," which was misbranded. Said product bore the following label: "Kopp's Baby's Friend Containing Eight and one-half per cent Alcohol; One Eight Grain of Sulphate of Morphine in Each Fluid Ounce. Mrs. J. A. Kopp, Sole Proprietor, C. Robert Kopp, Mfg. Chemist, York, Pa., U. S. A.," and inclosed with said drug was a circular containing the following statements: "This preparation is a valuable remedy for Wind Colic, Griping in the bowels, Diarrhœa and Teething troubles." "Removes wind and gas from the stomach and bowels, induces rest and quiet."

Analysis by the Bureau of Chemistry of the United States Department of Agriculture showed the drug to contain alcohol by volume 8.05 per cent, invert sugar 6.44 per cent, sucrose 29.76 per cent, ash 0.005 per cent, morphine sulphate about one-ninth grain to the fluid ounce. Misbranding was alleged for the reason that the combination of ingredients of which the above analysis shows the product to consist does not possess therapeutic properties adequate to obtain the results claimed for it in said statements, and that the statements and claims are, therefore, false and misleading.

On May 2, 1911, the defendant pleaded nolo contendere, and was fined $15 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 15, 1911.*

F. & D. No. 2668.
S. No. 970 Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1069.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF CONDENSED MILK.

On May 24, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of ten barrels of condensed milk in the possession of the Chouteau Avenue Crystal Ice and Cold Storage Plant, a branch of the St. Louis Brewing Association, a corporation. The barrels containing said milk were labeled as follows: "From White Hall Condensed Milk Co. White Hall, Ill. For Chouteau Ave. Cold Stg. Co., 2100 Chouteau Ave., St. Louis, Mo. Sugar Condensed Milk."

Analysis of a sample from said consignment by the Bureau of Chemistry, United States Department of Agriculture, showed the product to contain fat 2.48 per cent, proteids 9.62 per cent, lactose 15.65 per cent, solids 64.45 per cent, ash 2.55 per cent, sucrose 34.15 per cent. The libel alleged that said milk, after transportation from Iowa into the State of Missouri, remained in the original unbroken packages, and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906, and liable, therefore, to seizure for confiscation. Adulteration was alleged for the reason that a valuable constituent of the article, to wit, butter fat, had been in part abstracted from said product; and misbranding was alleged for the reason that the statement on said label, to wit, "Sugar Condensed Milk," was false and misleading because the product was not sugar condensed milk, but a condensed skimmed milk with sugar added, as shown by the aforesaid analysis.

On June 2, 1911, the White Hall Condensed Milk Co., by J. C. Spencer, its agent and manager, filed a claim to said property and

entered its appearance asking that an order be made by the court for the release of said property to the claimant upon the payment of the costs of the proceedings and the execution and delivery of a bond as provided by the aforesaid act; and the libelant and claimant consented to an adjudication and decree by the court. Accordingly, the court found the said product to contain evaporated skimmed milk and to be, therefore, misbranded, as alleged in the libel, and on the said date entered a decree condemning and forfeiting said milk to the United States and ordering the marshal to correctly label the same and sell it at public auction upon such terms and conditions as will not violate the provisions of the aforesaid act; and the claimant to pay all costs of the proceedings; provided, however, that should the White Hall Condensed Milk Co., claimant, pay all costs of the proceeding and deliver unto the United States a bond in the sum of $500 to be approved by the court, conditioned that the said milk shall not be sold or otherwise disposed of contrary to the provisions of said act, then the marshal should surrender and deliver the same to the said claimant.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 16, 1911.*

1069

O

F. & D. No. 2066.
I. S. No. 19511-b. Issued September 29, 1911

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1070.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF "DR. KLINE'S GREAT NERVE RESTORER."

On January 30, 1911, the United States Attorney for the District of New Jersey, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against Dr. R. H. Kline Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about April 20, 1910, from the State of New Jersey into the District of Columbia, of a consignment of a drug product denominated "Dr. Kline's Great Nerve Restorer," which was misbranded. The product was labeled: "Dr. Kline's Great Nerve Restorer No. 673. Guaranteed under the Food and Drugs Act, June 30, 1906, Non-Alcoholic. For diseases of the brain and nervous system. The great nerve tonic and sedative. Used successfully since 1871 in the treatment of sensitive, irritable, excitable and spasmodic nerve affections; fits, epilepsy and chorea or St. Vitus dance. Fits and spasms quickly controlled, brain congestion and fullness or rush of blood to the head, vertigo and dizziness are promptly relieved. Relieves nervous headache and insomnia or nervous wakefulness. For prompt relief of palpitation and fluttering of the heart, loss of memory, mechancholy, aversion to society, confusion of ideas, unpleasant dreams, fainting spells, hysteria, smothering, fear and dread of coming danger, sense of self-destruction, dots or specks before the eyes, and despondent symptoms. It is prompt and safe in its action. A trial is convincing. Dr. R. H. Kline Co., Redbank, N. J. U. S. A. Price one dollar per bottle. Dr. Kline's Great Nerve Restorer. Use Dr. Kline's family medicines No. 673. Guaranteed under the Food and Drugs Act, June 30, 1906. Dr. Kline's great nerve restorer for fits, epilepsy, spasms,

convulsions, St. Vitus dance, dizziness of the head, nervous headache, nervous wakefulness, gloomy forebodings, depression of spirits, fear and dread of coming danger, loss of memory, confusion of ideas, nervous debility and despondent symptoms." (The rest of the main part of back label is devoted to extolling other remedies put out by this firm.) At bottom of label: "All information required in relation to this treatment of the most difficult forms of diseases, and their complications, resisting ordinary treatment, can be obtained by sending to, or by making personal application at Dr. Kline's Dispensary, Office or Consulting Rooms. Consultation at Dispensary or by mail free. Dr. Kline Co., Redbank, N. J. U. S. A."

Analysis by the Bureau of Chemistry, United States Department of Agriculture, showed the product to consist of alcohol by volume 0.52 per cent, nonvolatile matter 19.63 per cent, ash 12.51 per cent, potassium bromide 12.78 per cent, ammonium bromide 6.15 per cent, and caramel and trace of sugar. Misbranding was alleged for the reason that the ingredients of said drug, as shown by the above analysis, do not possess the therapeutic properties as set forth and claimed for them on the aforesaid label, and that the statements on said label are, therefore, false and misleading.

On March 21, 1911, the defendant entered a plea of non vult, and, on April 10, 1911, the court suspended sentence.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 17, 1911.*

1070

O

F. & D. No. 1626.
S. No. 564. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1071.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF CORN BRAN.

On June 22, 1910, the United States Attorney for the Western Division of the Western District of Tennessee, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 542 sacks of corn bran in the possession of Planters' Warehouse Co. and Jones & Rogers.

Examination of samples from said consignment by the Bureau of Chemistry, United States Department of Agriculture, revealed that the substance had a strong musty odor, was badly molded, and infested with beetles. The libel alleged that the corn bran, after shipment by Bradley Bros., Paducah, Ky., from Kentucky into the State of Tennessee, remained in the original unbroken packages and was adulterated in violation of the Food and Drugs Act of June 30, 1906, because it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance, and was, therefore, liable to seizure for confiscation.

On May 25, 1911, the court found the said product to consist in part of a decomposed vegetable substance and that the United States was entitled to a decree of condemnation, as prayed for in said libel. Accordingly, a decree was entered on said date condemning and forfeiting the said bran to the United States and ordering its destruction by the marshal.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 17, 1911.*

7556°—No. 1071—11

F. & D. No. 2465.
S. No. 872. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1072.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO CATSUP.

On March 1, 1911, the United States Attorney for the Western Division of the Western District of Tennessee, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of three barrels of tomato catsup found on the premises at 122 Madison Avenue, Memphis, Tenn.

Examination of samples of said consignment by the Bureau of Chemistry, United States Department of Agriculture, showed them to contain yeasts and spores 130 per one-sixtieth cmm., bacteria 130,000,000 per cc., and mold filaments in 73 per cent of fields. The libel alleged that the tomato catsup, after shipment by Dodson Braun Branch, National Pickle & Canning Co., St. Louis, Mo., from the State of Missouri into the State of Tennessee, remained in the original unbroken packages and was adulterated in violation of the Food and Drugs Act of June 30, 1906, because it consisted in part of a filthy, decomposed, and putrid vegetable substance, and was, therefore, liable to seizure for confiscation.

On May 25, 1911, the court found said product to contain putrid and decomposed matter and to be, therefore, adulterated as charged in the libel, and held that the United States was entitled to a decree of condemnation as prayed in the libel. Accordingly, a decree was entered on said date condemning and forfeiting the goods to the United States and ordering their destruction by the marshal.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 17, 1911.*

7556°—No. 1072—11

F. & D. No. 1700.
S. No. 599. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1073.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF ICE CREAM CONES.

In July, 1910, the United States Attorney for the Eastern District of Louisiana, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district two libels praying condemnation and forfeiture, respectively, of 208 and 192 boxes of ice cream cones, the former lot being in the possession of the Oriental Bakers' & Confectioners' Supply House, New Orleans, La., and the latter being in the possession of the Harris Ice Cream Co., also at New Orleans, La.

Examination of samples of this product by the Bureau of Chemistry, United States Department of Agriculture, showed it to contain boric acid. The libel alleged that the cones, after shipment by Consolidated Wafer Co. (Inc.), Brooklyn, N. Y., from the State of New York into the State of Louisiana, remained in the original unbroken packages and were adulterated in violation of the Food and Drugs Act of June 30, 1906, and were, therefore, liable to seizure for confiscation. Adulteration was alleged because they contained an added deleterious ingredient, to wit, boric acid, which might render them injurious to health.

On January 16, 1911, no person appearing as claimant of said cones, it was adjudged, ordered, and decreed by the court that 197 boxes of the first lot, and 68 boxes of the second lot, the same being all that was found by the marshal at the time of seizure, be condemned and forfeited to the use of the United States for the causes above set forth and that the product be destroyed by the marshal for said district.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 17, 1911.*

7556°—No. 1073—11

F. & D No. 1556.
S. No. 552. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1074.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF DESICCATED EGG PRODUCT.

In May, 1910, the United States Attorney for the Eastern District of Louisiana, acting upon the report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of two drums of desiccated egg product in the possession of the New Orleans Cold Storage & Warehouse Co. (Ltd.), New Orleans, La.

Examination of sample of this product by the Bureau of Chemistry, United States Department of Agriculture, showed it to contain an excessive number of bacteria, many of which were of the gas-producing type. The libel alleged that the eggs, after shipment by C. H. Weaver & Co., of Chicago, from the State of Illinois into the State of Louisiana, remained in the original unbroken packages and were adulterated in violation of the Food and Drugs Act of June 30, 1906, and were, therefore, liable to seizure for confiscation. Adulteration was alleged on the ground that the product consisted of a filthy, decomposed, or putrid animal substance.

On January 16, 1911, no person appearing as claimant of said product, it was ordered, adjudged, and decreed by the court that said product be condemned and forfeited to the use of the United States for the cause set forth in the libel, and that it be destroyed by the marshal of said district.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 19, 1911.*

8511°—No. 1074—11

F. & D. No. 2186.
S. No. 798. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1075.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO CATSUP.

On December 20, 1910, the United States Attorney for the Eastern District of Louisiana, acting upon the report by the Secretary of Agriculture, filed in the District Court for said district a libel praying condemnation and forfeiture of 25 barrels of tomato catsup in the possession of the Louisiana Molasses Co. (Inc.), New Orleans, La.

Examination of samples of this product by the Bureau of Chemistry, United States Department of Agriculture, showed it to contain yeasts and spores 100 per one-sixtieth cmm., bacteria 185,000,000 per cc., with mold filaments in 70 per cent of the microscopic fields. The libel alleged that the catsup, after shipment by the Philadelphia Pickling Co., of Philadelphia, from the State of Pennsylvania into the State of Louisiana, remained in the original unbroken packages and was adulterated in violation of the Food and Drugs Act of June 30, 1906, and was, therefore, liable to seizure for confiscation. Adulteration was alleged because the product consisted in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance.

On February 1, 1911, no person appearing as claimant of said catsup, it was ordered, adjudged, and decreed by the court that the product be condemned and forfeited to the use of the United States for the cause set forth in the libel, and that the product be destroyed by the marshal for said district.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 19, 1911.*

8511°—No. 1075—11

F. & D. No. 1940.
I. S. No. 15967-b. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1076.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF A DRUG PRODUCT—"LA SANADORA."

At the November, 1910, term of the Fourth Judicial District Court of the Territory of New Mexico, the grand jurors of the Fourth Judicial District for said Territory presented an indictment against Benigo Romero, trading under the firm name of the Romero Drug Co., alleging shipment by him, in violation of the Food and Drugs Act, on or about April 3, 1910, from the Territory of New Mexico into the State of California, of a quantity of a certain drug product denominated "La Sanadora," which was misbranded. The product was labeled: (On carton) "La Sanadora. Trade Mark Reg. U. S. Pat. Office." (In Spanish, translation of which follows): "A cure for internal and external use. Cures Rheumatism, twitching of the eyebrows, contusions, scratches, headache, throatache, cough, colds, diarrhœa, cuts, bites, the stings of insects and reptiles, swelling, contractions of the tendons, and muscles, rigidity of the joints, back and chest ache, rump ache, inflammation of the kidneys, neuralgia, excoriations of the body, earache, catarrh, fever, cramps, colic and cholera, piles, and all painful affections. One fluid ounce of La Sanadora contains 89% of ethyl alcohol, 1⅛ minims of chloroform, 1½ grains of powdered opium, and other curative ingredients. Guaranteed under the Food and Drugs Act, June 30, 1906, Serial No. 2737. Precio 25 centavos. Romero Drug Company, Las Vegas, N. M." (On bottle): The bottle bears no label, but blown in the bottle appear the words "La Sanadora, Romero Drug Company."

Analysis of a sample of this product made in the Bureau of Chemistry of the United States Department of Agriculture showed it to contain a hydro-alcoholic solution of opium, chloroform, a resin-like body, ammonium hydroxid, oil of peppermint, and undeter-

mined matter. Misbranding was alleged in the first count of the indictment for the reason that the label on the product contained no statement of the quantity or proportion of alcohol, chloroform, and opium contained therein. Misbranding was alleged in the second count for the reason that the ingredients contained in said product, as shown by the aforesaid analysis, possess no therapeutic properties adequate to effect a cure of rheumatism and headache, and said statements on the label were, therefore, false and misleading.

On May 9, 1911, the defendant entered a plea of guilty to the first count, and was fined $50; the second count of the indictment was thereupon dismissed on motion of the United States attorney.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 21, 1911.*

1076

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F. & D. No. 274.
I. S. No. 27.

Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1077.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF DR. TUCKER'S SPECIFIC FOR ASTHMA.

On January 12, 1909, the United States Attorney for the Southern District of Ohio, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against Nathan Tucker, M. D., alleging shipment by him, in violation of the Food and Drugs Act, on or about January 23, 1908, from the State of Ohio into the District of Columbia, of a consignment of a drug known as Dr. Tucker's Specific for Asthma, which was misbranded. The drug was labeled: "Nathan Tucker, M. D., Specific for Asthma, Hay Fever, and all Catarrhal Diseases of the Respiratory Organs."

Analysis of a sample of this product by the Bureau of Chemistry of the United States Department of Agriculture showed it to contain cocaine. Misbranding was alleged in the first count of the information because said drug contained cocaine, and the label bore no statement of the quantity or proportion of cocaine contained in said drug; and in the second count for the further reason that the use of the word "specific" on the label was false and misleading and calculated to mislead and deceive the purchaser in that it represented the drug as a complete cure for the diseases named on said label, when in fact the ingredients of said drug were not a sure or complete cure for said diseases.

On December 8, 1909, a demurrer to the information was filed, together with a motion to quash the same. On December 13, 1909, the said motion and demurrer were overruled by the court. On December 15, 1909, the defendant was arraigned and pleaded not guilty, and on the same date the case was tried by a jury which found the defendant guilty as to the first count, and not guilty as to the second count of the information. On December 18, 1909, motions in arrest of judgment and for a new trial were filed. On April 8, 1911, the court overruled said motions and imposed a fine of $150 and costs

against the defendant. In overruling the motion for a new trial the court rendered the following opinion:

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION.

THE UNITED STATES OF AMERICA
vs.
NATHAN TUCKER.
} On motion for a new trial.

SATER, *District Judge:*

The defendant delivered at Mt. Gilead, Ohio, and shipped from that place to one Henson (whose real name is Morgan), residing at Washington, D. C., a bottle of medicine containing cocaine. The bottle bore no label or brand indicating the presence of that drug in the medicine. The jury having found him guilty of violating the Pure Food and Drugs Act, June 30, 1906, 34 Stat. 768, he moves to set aside the verdict on the ground that he was engaged in intrastate and not in interstate commerce.

In answer to an inquiry from Henson, the defendant mailed him an examination or symptom blank and what is manifestly a previously prepared stock letter, stating that under a separate cover were forwarded to him circulars fully explaining the defendant's system of relief and cure for asthma, hay fever and nasal catarrh, and naming the cost of treatment. Henson was requested to fill out the blank and return it with full payment in advance, on receipt of which a treatment would be sent by express without delay. Henson filled out the symptom blank and returned it with a postal order for the sum named. Thereupon the defendant deposited in the mail at Mt. Gilead a bottle containing two ounces of the medicine, addressed to Henson, and also shipped to him by express an atomizer, both of which were received by Henson at Washington. Later a second bottle of medicine was sent in the same manner as the first. Henson made no suggestion and gave no direction as to the mode of transporting any of the medicine.

Was the transaction in which the defendant engaged interstate commerce? His contention is that the sale and delivery were completed in Ohio, when the medicine was deposited in the mail, and that the title thereto then and there passed to the purchaser, free from any interest of the defendant therein, that the delivery to the postal department for transmission to Henson was a delivery to him, and that consequently the transaction was wholly intra-state and governed by the Ohio law of sales, 99 Ohio L., 413–425, Secs. 8381–8455, Ohio General Code. He claims that the fact that the sale was made with the intent that the medicine should be transported from Ohio to the District of Columbia after the sale and delivery were fully completed did not impart an interstate character to the transaction, because the agent by whom the transportation was effected—the United States mail—was the agent of the purchaser and not of himself. To sustain his contention he relies on State v. Mullin, 78 Ohio St., 358. In that case a resident of Harrison County gave an order by mail to a resident of Jefferson County for a case of beer to be forwarded to the purchaser by express, marked C. O. D. The beer was sent, received, and paid for. It was held that the express company was the agent of the purchaser to receive the goods from the seller and the agent of the seller to receive their price from the purchaser, and that upon delivery to the carrier the title to the goods passed to the purchaser, although he was not entitled to their actual possession until he paid or tendered the purchase price. It was further held that the place of both the sale and delivery was the place of the seller's residence, and that the sale was completed when the seller delivered the goods to the carrier.

The transaction was wholly intra-state and the goods were shipped under instructions given by the purchaser. The facts of that case and the law applicable thereto readily distinguish it from the case at bar.

The second section of the Pure Food and Drugs Act is limited in its application to interstate and foreign commerce. The prohibition therein contained runs against the introduction of misbranded drugs into any state, or territory, or the District of Columbia, from any other part of the United States, or from any foreign country. The offense with which the defendant is charged is the shipment and delivery of such a drug for shipment to a point outside of the state, an offense which is punishable whether the destination of the article shipped or delivered for shipment is within the United States or in a foreign country. He solicited and obtained the defendant's order for the medicine. He knew that the transaction, if consummated, would necessitate interstate transportation. That the negotiations were conducted by mail is unimportant. Commerce is intercourse, Gibbons v. Ogden, 9 Wheat., 189, 193, and for the purposes of commercial intercourse parties may avail themselves of the mails as well as of traveling salesmen, Robbins v. Shelby Taxing District, 120 U. S., 489, 495, or of the telegraph, Pensacola Tel. Co. v. Western Union Tel. Co., 96 U. S., 1, or the telephone, Central Union Telephone Co. v. State, 118 Ind., 194; Judson on Interstate Commerce, Sec. 6.

Neither a sale nor the place of sale and delivery is alone the test of interstate commerce, nor does transportation, although an adjunct essential to commerce, constitute a transaction of interstate commerce. A sale, the parties to which are from different states, is a transaction of interstate commerce, wherever the contract of sale may be made, when the goods are to be transported from one state to another, whether the sale is made before or after shipment. The indispensable element and test of interstate commerce is importation into one state from another. Every negotiation, contract, initiatory and intervening act, trade and dealing between citizens of any state, or territory, or the District of Columbia, with those of another political division of the United States, which contemplates and causes such importation, whether it be of goods, persons, or information, is a transaction of interstate commerce. (U. S. *v.* Swift & Co., 122 Fed. Rep., 529, 531; Butler Bros. Shoe Co. *v.* U. S. Rubber Co., 156 Fed. Rep., 1, 17; Hopkins *v.* U. S., 171 U S., 578, 597; 7 Cyc. 416; Globe Elevator Co. *v.* Andrew, 144 Fed. Rep., 871, 882; Re Charge to the Grand Jury, 151 Fed. Rep., 834, 839.) When the state courts have been called upon to express themselves, their utterances have been in harmony with the foregoing. (Cooke *v.* Rome Brick Co., 98 Ala., 413; Culverson *v.* American Trust & Banking Co., 107 Ala., 464; Loverin & Browne Co. *v.* Travis, 135 Wis., 322, 331.) In the last named case it is said that—

"It cannot now be doubted that 'commerce' in the federal constitution, comprehends all of the intercourse between the parties necessarily or ordinarily involved in a commercial transaction with reference to merchantable commodities. Nor can it be doubted that the solicitation of the purchaser by the seller, the contract of purchase and sale, and the actual physical delivery to the purchaser by whatever means may be selected are all inherent parts of the intercourse pertaining to trade or traffic in merchandise."

The transaction in which the defendant engaged was interstate commerce. The evidence justified the verdict returned by the jury, and the motion is therefore overruled.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 21, 1911.*

1077

O

F. & D. No. 1628.
I. S. No. 10334-b. Issued September 29, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1078.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF CHEWING GUM.

On April 20, 1910, the United States Attorney for the Northern District of West Virginia, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Sterling Remedy Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about September 2, 1909, from the State of West Virginia into the State of New York of a consignment of chewing gum, which was misbranded. The said product was labeled: "Nerve Gum. A delicious chewing gum, that builds up your nerves, tones the system, makes you strong, full of health and life by enriching the blood. Pleasant and perfect tonic for nervous, thin-blooded women and children, and men old before their time. Sold by druggists or mailed for price 12 chews for 10 cents. Health while you chew. Health purity. For all nervous people. This gum is made of pure gum chicle without any mineral waxes usually contained in common, cheap chewing gums. Its medicinal principles are purely vegetable and entirely harmless. Its slightly bitter taste becomes very agreeable and stimulating. The tonic effects will be noticeable from the beginning, and you will have a 'braced-up' feeling and a good appetite. Nerve Gum will be helpful in any case of weakness from any cause, and all forms of nervousness. In a month's time, pale, sickly, weak men, women and children have grown rosy and shown a gain in flesh, strength and nervous energy. Headaches and colds. Headaches relieved in a few minutes, and the nervous shaky feeling in the morning is quickly allayed by Nerve-Gum. Perfumes the breath, disinfects the mouth, teeth, throat, stomach, and digestive canal, and relieves catarrh, coughs, colds, and sore throat. A blessing to singers,

clergymen and public speakers. A boon to tobacco users Relieving the evil and unpleasant effects of excessive smoking and chewing, neutralizing the nicotine poison absorbed through the mucous lining of the mouth by acting through the same channels. No. 279. Guaranteed under the Food & Drugs Act, June 30, 1906. Originated, owned and distributed by the Sterling Remedy Company. Address: Chicago or New York."

Analysis made by the Bureau of Chemistry of the United States Department of Agriculture showed the product to be ordinary chewing gum, flavored and containing a small quantity of some unidentified bitter principle. Misbranding was alleged for the reason that the ingredients contained in said product were without the therapeutic or curative properties claimed for it in the above label, and the statements on the label as to the curative properties of said product were, therefore, false and misleading.

On May 2, 1911, the defendant corporation pleaded guilty and was fined $10.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 21, 1911.*

1078

O

F. & D. No. 2463.
I. S. No. 9803—c.

Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1079.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF EPILEPSY CURE.

On May 10, 1911, the United States Attorney for the Eastern District of Michigan, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against Dr. Peebles's Institute of Health, Ltd., Battle Creek, Mich., alleging shipment by it, in violation of the Food and Drugs Act, on September 2, 1910, from the State of Michigan into the District of Columbia, of a package containing two bottles of a drug denominated respectively "Dr. Peebles' Brain Restorative for Epilepsy and all diseases of the brain and nervous system", and "Dr. Peebles' Nerv-Tonic for the blood and nerves, purely vegetable". The label on these two bottles contained the following statements, viz: (Bottle No. 2) "Purity Guarantee Serial No. 9886. Dr. Peebles Brain Restorative for Epilepsy and all diseases of the Brain and Nervous System. This Great Reconstructive Brain Tonic is the result of nearly twenty-five years experience with Epilepsy and other nervous and mental disorders. It sustains and strengthens while assisting nature in building up worn-out and broken nerve and brain tissues. This Prescription Contains 12% Alcohol. Just enough to preserve it and keep it pure, fresh and active. Directions: Take a teaspoonful in half a tumbler of water about half an hour after each meal. Caution Be careful in the matter of diet. Drink lots of water—one to two quarts per day—and keep the bowels regular. Carelessness in these matters can easily undo in a few days time all we can possibly accomplish in weeks. Be faithful and persistent and live up to the best that is within you at all times. Dispensed only by Dr. Peebles Institute of Health, Battle Creek, Michigan." (Bottle No. 1) "Pur-

ity Guarantee Serial No. 9886. Dr. Peebles' Nerv-Tonic for the Blood and Nerves Purely Vegetable. Dr. Peebles' Nerv-Tonic is a purely Vegetable Blood Purifier and Nerve Tonic, compounded from highly concentrated extracts of roots, herbs and barks. A Pleasant, Safe and Effectual Remedy for impure and impoverished blood; Weak and Broken Down Nerves; Nervous and Mental Exhaustion; Fainting Spells; Paralysis; St. Vitus' Dance; Epilepsy; loss of Memory; Hysteria; Sleeplessness; Nervous Headaches; Neuralgia and other symptoms of Nerve Weakness and disease the result of heredity, overwork, indiscretions or excesses. This Prescription contains 12% Alcohol, just enough to preserve it and keep it pure, fresh and active. Dose: One teaspoonful in a wine-glass of water three times per day (preferably before meals) in mild cases, and every four hours in those that are more aggravated. Dispensed only by Dr. Peebles Institute of Health. Battle Creek, Mich." Packed with the two bottles was a pamphlet in which appeared the following statements, among others: "Our treatment is * * * curative. We treat and remove causes and not the symptoms"; "Our treatment is made up of * * * remedies of known specific efficiency"; "Epilepsy * * * there is a sure and reliable cure for most cases. If you will hold to the treatment faithfully * * * we believe we can cure you. And when we say cure, we mean a permanent, lasting cure"; "Our Epilepsy Specifics * * * attack the disease at its very fountain head, the brain and great nerve centers * * * Your improvement will be somewhat slow at first but none the less sure. * * * Your vitality will increase. The nerves will become steadier, the brain more active, and the intellect clearer and brighter. You will be on the high road to permanent recovery"; "We have cured many others after every known treatment and remedy had failed, and with your honest and faithful help, we see no reason why we cannot cure you"; "Do not * * * throw away this opportunity of a full and lasting cure * * * stand firm and faithfully by the treatment until your disease is fully uprooted, the damage to the brain and nervous system repaired, and your are able to rejoice with the ever increasing army of the cured".

Analyses by the Bureau of Chemistry of this Department of the aforesaid drugs showed the Nerv-Tonic to be a sweetened hydro-alcoholic solution of vegetable products of a non-alkaloidal nature, containing no material with distinctive active characteristics, and the Brain Restorative to be a solution of bromides of ammonium, sodium and potassium combined with an alcoholic preparation of valerian, and flavored with bitter almond flavor. Misbranding was alleged for the reason that the statements, above set forth, contained in the labels on the two bottles and the pamphlet in which said bottles were wrapped and packed are false and misleading, because they convey the impres-

sion that the drugs in question possess therapeutic properties of high value in the treatment of epilepsy and diseases of the brain and nervous system, when, in truth and in fact, the agents of which the said drugs are composed have long been known in the medical profession and no reliable authority claims that, taken singly or together, they can be relied on for the cure of epilepsy or kindred diseases, the fact being generally recognized among the highest medical authorities that there is no substance or mixture known at the present time which can be relied upon for this purpose, any beneficial effect which the treatment in question might have being temporary and palliative only.

On May 18, 1911, the defendant company, by its treasurer, filed a plea of nolo contendere, and a fine of $5 was imposed, which fine has been paid.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 23, 1911.*

1079

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F. & D. No. 1622.
I. S. No. 12135–b. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1080.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO CATSUP.

On September 20, 1910, the United States Attorney for the Northern District of West Virginia, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the McMechen Preserving Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about November 19, 1909, from the State of West Virginia into the State of Pennsylvania of a consignment of tomato catsup which was adulterated. The product was labeled: "Princess Royal Brand Home Made Catsup. Made from Whole Tomatoes, Gran. Sugar, Salt, Onions, Pure Spices, Grain Vinegar and prepared with 1/10 of 1% Benzoate Soda. Packed for Jacob Haller, Erie, Pa."

Analysis and examination by the Bureau of Chemistry, United States Department of Agriculture, showed the following results: Total solids, 11.10 per cent; insoluble solids, 1.76–2.13 per cent; soluble solids in filtrates, 9.20 per cent; soluble solids by difference, 9.36 per cent; yeasts and spores 90 per one-sixtieth cmm. Bacteria fairly numerous, estimated at not less than 40,000,000 per cc. Molds fairly numerous, but not very excessive. No indication of trimming stock. No foreign starch. Adulteration was alleged for the reason that a substance, to wit, water, had been mixed and packed with said product so as to reduce, or lower, or injuriously affect its quality and strength, and for the further reason that it consisted in whole or in part of a decomposed vegetable substance, as shown by the aforesaid analysis and examination.

On May 3, 1911, defendant corporation pleaded guilty and was fined $10.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 23, 1911.*

8252°—No. 1080—11

F. & D. No. 1431.
I. S. No. 10865–b. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1081.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF CURRANT PRESERVES.

On September 20, 1910, the United States Attorney for the Northern District of West Virginia, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against E. C. Flaccus Co., alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 10, 1909, from the State of West Virginia into the State of Maryland of a consignment of preserves, which was misbranded. The product was labeled: "Champion Brand Red Currant. Apple-glucose-sugar Preserves Compound. Colored with Beekler's fruit red paste. 10% sugar, 22% red currants, 31% apple juice, 36% glucose, 1% phosphoric acid. Prepared by E. C. Flaccus Co., Wheeling, W. Va."

Analysis of a sample of this product by the Bureau of Chemistry, United States Department of Agriculture, showed it to contain 70.06 per cent glucose. Misbranding was alleged for the reason that the label represented the product as containing only 36 per cent glucose, when, in fact, it contained, as shown by the above analysis, 70.06 per cent glucose, and the statement on the label as to the amount of glucose contained in said product was, therefore, false and misleading.

On May 3, 1911, the defendant pleaded guilty, and was fined $10.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 23, 1911.*

8252°—No. 1081—11

F. & D. No. 2224.
I. S. No. 1804–c.

Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1082.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF TAMARIND SYRUP.

At the March term of court, 1911, the United States Attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed an information against W. P. Bernagozzi, New York, N. Y., alleging the shipment by him, in violation of the Food and Drugs Act, on or about July 1, 1910, from the State of New York into the State of Missouri, of a quantity of tamarind syrup, which was adulterated and misbranded. The product was labeled: (On bottle cap) "Purity Guaranteed W. P. B." (On neck label) "Guaranteed under the Food and Drugs Act June 30, 1906, Serial No. 4438." (Main label) "Sciroppo Tamarindo."

Analysis of the product by the Bureau of Chemistry of this Department showed it to consist in part of an artificial syrup, and to contain the coloring matter known as caramel, or burnt sugar. The information, therefore, alleged adulteration of the product in that a certain substance, viz, caramel, had been mixed and packed with the article so as to injuriously affect its quality and strength. Misbranding was alleged in the information in that the label on the container indicated that the product consisted of tamarind syrup, when in fact it was an imitation syrup, and the article was, therefore, so labeled and branded as to deceive and mislead the purchaser.

On April 17, 1911, the defendant pleaded guilty and was fined $25.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 23, 1911.*

8252°—No. 1082—11

F. & D. No. 2378, I. S. No. 21255–b; F. & D. No. 2379, I. S. No. 21129–b; F. & D. No. 2382, I. S. No. 21159–b; F. & D. No. 2383, I. S. No. 21179–b; F. & D. No. 2385, I. S. No. 21379–b; F. & D. No. 2386, I. S. No. 21121–b; F. & D. No. 2389, I. S. No. 21364–b; F. & D. No. 2390, I. S. No. 20617–b; F & D. No. 2391; I. S. No. 22352–b; F. & D. No. 2392, I. S. No. 21383–b; F. & D. No. 2393, I. S. No. 21300–b.

Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1083.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF MILK.

At the May term of the District Court of the United States for the District of Indiana, the grand jurors of the United States within and for said district returned indictments, severally, against each of the following persons within said district, viz, Charles E. Smith, Milan, Ind.; Dan McAvoy, Delaware, Ind.; L. H. Schulte, Delaware, Ind.; E. J. Koechlin, Delaware, Ind.; James F. Coffee, Pierceville, Ind.; A. H. Schuck and Jerome Schuck (partners), New Trenton, Ind.; Charles Oser, Pierceville, Ind.; Leonard Hudson and James Cox (partners), Longnecker, Ind.; Henry A. Boberink, Lawrenceberg, Ind.; J. T. Plump, Pierceville, Ind.; Chris Bohlke, Milan, Ind., charging shipment by each, in violation of the Food and Drugs Act, on the 9th day of June, 1910, from the State of Indiana into the State of Ohio, of a quantity of milk which was adulterated. Each of the aforesaid indictments was based upon a report by the Secretary of the United States Department of Agriculture showing from examinations by the Bureau of Chemistry of said Department of samples taken from each of the aforesaid shipments, that the said milk in each case contained an excessive number of bacteria, including in some of the samples members of the B-coli and streptococcus groups. Adulteration was charged in said indictments for the reason that said milk consisted in part of a filthy, decomposed, and putrid animal substance, as shown by the aforesaid examinations.

On May 17, 1911, each of the defendants was arraigned upon the indictment found against him, and pleaded guilty to the charges

contained therein, whereupon the court fined each of said defendants as follows: Charles E. Smith, $25 and costs; Dan McAvoy, $25 and costs; L. H. Schulte, $100 and costs; E. J. Koechlin, $100 and costs; James F. Coffee, $25 and costs; A. H. Schuck and Jerome Schuck (partners), $25 and costs; Charles Oser, $25 and costs; Leonard Hudson and James Cox (partners), $25 and costs; Henry A. Boberink, $100 and costs; J. T. Plump, $25 and costs; Chris. Bohlke, $25 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 23, 1911.*

1083

O

F. & D. No. 2030.
S. No. 731. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1084.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF COFFEE.

On November 9, 1910, and December 31, 1910, the United States Attorney for the Eastern District of Louisiana, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district, respectively, a libel and an amended libel praying condemnation and forfeiture of 74 sacks of coffee in the possession of Leon Israel & Bros., New Orleans, La. The product was labeled, "L. I. & B., New Orleans, La.—H. M. B., Kx Br."

Examination of samples of this product, made by the Bureau of Chemistry, United States Department of Agriculture, showed it to consist of South American coffee which had been sweated and treated in such a manner as to be an imitation of Dutch East India coffee. The libel as amended alleged that the coffee, after shipment by Leon Israel & Bros., New York City, from the State of New York into the State of Louisiana, remained in the original unbroken packages, and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906. Adulteration was charged because the coffee was colored in a manner whereby its inferiority was concealed and because valuable constituents had been in part abstracted therefrom. Misbranding was charged because the product was an imitation of and offered for sale under the distinctive name of another article, to wit, Kroe Extra Brown Coffee, and further because said coffee was labeled and branded so as to deceive and mislead the purchaser, being branded "Kx Br."

On March 15, 1911, the jury returned a verdict of guilty. On March 16, 1911, the court entered its decree, condemning and for-

feiting 66 sacks of the product, the same being all that was found at the time of seizure, to the use of the United States, as being adulterated and misbranded, as charged in the above libel and amended libel, and ordering that the said coffee be disposed of by sale, provided, however, that the same should be returned to the claimants upon the execution and delivery of a good and sufficient bond to the effect that the said coffee should not be sold or otherwise disposed of contrary to law.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 24, 1911.*

1084

O

F. & D. No. 1995.
S. No. 714. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1085.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO CATSUP.

In October, 1910, the United States Attorney for the Eastern District of Missouri, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district two libels praying condemnation and forfeiture of 100 cases and 15 barrels, respectively, of tomato catsup, in the possession of Gildehaus-Wulfing & Co., St. Louis, Mo. The product was labeled, "Oyster Bay Brand Tomato Ketchup, Free from any artificial coloring, preserved with 1/10 of 1% benzoate of soda, packed for Gildehaus-Wulfing & Co., St. Louis, Mo."

Examination of samples of this product, made by the Bureau of Chemistry of the United States Department of Agriculture, showed it to contain 100 million bacteria per cc., 71 yeasts and spores per one-sixtieth cmm., with mold filaments in 75 per cent of the microscopic fields examined. The libels alleged that the tomato catsup, after transportation from the State of Ohio into the State of Missouri, remained in the original unbroken packages, and was adulterated in violation of the Food and Drugs Act of June 30, 1906, because it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On April 3, 1911, the cause came on to be heard and the court issued its decree, finding 78 cases and 6 barrels of the product, the same being all that was found at the time of seizure, to be adulterated, as charged in the above libels and ordering the destruction of said product.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 24, 1911.*

8788°—No. 1085—11

F. & D. No. 2010.
S. No. 718.
Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1086.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF TOMATO CATSUP.

In November, 1910, the United States Attorney for the Eastern District of Missouri, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of 100 cases of tomato catsup, in the possession of August Nasse & Sons, St. Louis, Mo. This product was labeled: (On case) "2 Doz., 14 oz., Pioneer Brand Tomato Catsup, packed for August Nasse & Sons, St. Louis, Mo."; (on bottle) "Pioneer Brand Catsup, free from any artificial coloring, preserved with 1/10 of 1% benzoate of soda. Packed for August Nasse & Sons, St. Louis, Mo."

An examination, made by the Bureau of Chemistry of the United States Department of Agriculture, of samples of this product showed it to contain 144 million bacteria per cc., 250 yeasts and spores per one-sixtieth cmm., with mold filaments in 90 per cent of the microscopic fields examined. The libel alleged that the tomato catsup, after transportation from the State of Ohio into the State of Missouri, remained in the original unbroken packages, and was adulterated in violation of the Food and Drugs Act of June 30, 1906, because the said catsup consisted in part of a filthy, decomposed, and putrid vegetable substance.

On April 3, 1911, the cause came on to be heard and the court issued its decree, finding 68 cases of the catsup, the same being all that was found at the time of seizure, to be adulterated as charged in the libel, and ordering the destruction of the product.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 24, 1911.*

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8788°—No. 1086—11

F. & D. No. 2436.
S. No. 852. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1087.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF SHAD.

On February 16, 1911, the United States Attorney for the District of Columbia, acting upon the report of the Secretary of Agriculture, filed in the Supreme Court of said District a libel praying condemnation and forfeiture of 40 cold-storage shad in the possession of Benjamin Bailey, Washington, D. C.

Examination made by the Bureau of Chemistry of the United States Department of Agriculture showed the product to be in a putrid and decomposed state. The libel alleged that the shad were offered for sale in the District of Columbia, and were adulterated in violation of the Food and Drugs Act of June 30, 1906, because they consisted in part of a filthy, decomposed, and putrid animal substance.

On April 4, 1911, the cause came on for hearing, and no claimant to the product having appeared and no answer having been filed, the court issued its decree condemning and forfeiting the said product to the use of the United States for the causes set forth in the above libel, and ordering the destruction thereof by the marshal.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 24, 1911.*

8788°—No. 1087—11

F. & D. No. 2435.
S. No. 852. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1088.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF SHAD.

On February 16, 1911, the United States Attorney for the District of Columbia, acting upon the report of the Secretary of Agriculture, filed in the Supreme Court of said District a libel praying condemnation and forfeiture of 40 cold-storage shad, in the possession of the Old Dutch Market, a corporation, Washington, D. C.

An examination made by the Bureau of Chemistry of the United States Department of Agriculture of samples of this product showed it to be in a putrid and decomposed condition. The libel alleged that the shad were offered for sale in the District of Columbia, and were adulterated in violation of the Food and Drugs Act of June 30, 1906, because they consisted in part of a filthy, decomposed, and putrid animal substance.

On March 13, 1911, the cause came on for hearing, and no answer having been filed and no claimant having appeared, the court issued its decree finding 34 of the shad, the same being all that were found at the time of seizure, to be adulterated, as charged in said libel, and ordering the destruction thereof by the marshal of said District.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 24, 1911.*

8788°—No. 1088—11

F. & D. No. 1040.
S. No. 369. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1089.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF GIN.

On November 20, 1909, the United States Attorney for the Western District of Louisiana, acting upon the report of the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of three barrels of gin in the possession of Ferriday Liquor Co., Ferriday, La. The product was labeled: "Mobile Buck Gin; regain your lost courage, vim, vigor, energy; Useful in troubles of the kidneys, bladder, and urinary organs. Does not contain any harmful or deleterious substances or adulterants. Bluenthal & Bickart, Inc., Baltimore, Md. * * *."

Examination made by the Bureau of Chemistry of the United States Department of Agriculture of samples of this product showed that it did not possess the medicinal qualities claimed for it in the label. The libel alleged that after transportation from the State of Maryland into the State of Louisiana the gin was offered for sale in the Western District of Louisiana, and was misbranded, in violation of the Food and Drugs Act of June 30, 1906, because it was not a drug or liquor of the character imported by the label above quoted; because the label was misleading in that it was calculated to mislead the purchaser into the belief that the product was of a medicinal character; and because the label failed to bear a statement of the quantity or proportion of the alcohol contained in the product.

On April 10, 1911, the cause came on for hearing, and no claimant having appeared and no answer having been filed, the court issued its decree, condemning and forfeiting the said three barrels of gin to the use of the United States for the causes alleged in the libel, and ordering the sale thereof.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 25, 1911.*

8509°—No. 1089—11

F. & D. Nos. 1988, 2248.
I. S. Nos. 15756-b, 2481-c. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1090.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF CATSUP AND TOMATOES.

At the May term of the District Court of the United States for the District of Indiana, the grand jurors of the United States within and for said district returned an indictment against the J. T. Polk Co., a corporation, of the city of Greenwood, in said district, charging, in two counts, shipment by it, in violation of the Food and Drugs Act, on December 16, 1909, of a quantity of "Everybody's Catsup" from the State of Indiana into the State of Ohio, and on May 15, 1910, of a quantity of "Stewed and Strained Tomatoes" from the State of Indiana into the State of Kentucky, both of which products were adulterated.

The said indictment was based upon a report of the Secretary of Agriculture, showing from examinations of samples by the Bureau of Chemistry that the "Everybody's Catsup" contained yeasts and spores in the proportion of 49 per one-sixtieth cmm., bacteria numerous, estimated at 150,000,000 per cc., and molds present in about four-fifths of the microscopic fields; and that the "Stewed and Strained Tomatoes" contained molds in about two-thirds of all microscopic fields examined, with yeasts and spores at the rate of about 300 per one-sixtieth cmm. and bacteria about 20,000,000 per cc. Adulteration was charged against the respective products in two counts, for the reason that each of said products consisted in part of a filthy, decomposed, and putrid vegetable substance, as shown by the aforesaid examinations.

On May 17, 1911, the defendant corporation withdrew its plea of not guilty, previously entered in said prosecution, and pleaded guilty to the indictment, whereupon the court fined the defendant $200 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 25, 1911.*

8509°—No. 1090—11

F. & D. No. 2123.
I. S. Nos. 5904–c, 5905–c. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1091.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF DR. DETCHON'S RELIEF FOR RHEUMATISM AND DR. DETCHON'S RELIEF FOR RHEUMATISM TABLETS.

At the May term of the District Court of the United States for the District of Indiana the grand jurors of the United States in the aforesaid district returned an indictment against I. A. Detchon, of Crawfordsville, within said district, charging in two counts shipments by him, in violation of the Food and Drugs Act, on July 3, 1910, from the State of Indiana into the District of Columbia, of certain drugs denominated "Dr. Detchon's Relief for Rheumatism" and "Dr. Detchon's Relief for Rheumatism Tablets," respectively, both of which drugs were misbranded. The cartons and packages containing said products were respectively labeled as follows: "Dr. Detchon's relief for rheumatism, formerly sold as Mystic Cure for Rheumatism and Neuralgia. The peculiar power of this remedy to relieve the severest cases of inflammatory rheumatism in a few hours is very wonderful. It removes the cause from the system and the disease quickly disappears. Serial No. 3512. Guaranteed by Dr. I. A. Detchon, Crawfordsville, Indiana. Price $1.00. Relief for rheumatism, lumbago, or rheumatism of the back, and neuralgia in its various forms, such as neuralgia of the face and head, neuralgia of the heart, neuralgia of the stomach and bowels, etc." "Detchon's relief for rheumatism tablets. Formerly sold as Mystic Cure Tablets for Rheumatism and Neuralgia. Sugar Coated. Easy to take. Guaranteed by Dr. I. A. Detchon under the Food and Drugs Act of June 30, 1906. Serial No. 3512. Distributed by Dr. I. A. Detchon Chemical Co., Crawfordsville, Indiana. Price $1.00. Table S. Relieves acute rheumatism or inflammatory rheumatism, chronic rheumatism, muscular rheumatism, articular rheumatism, sciatic rheumatism, lumbago or rheumatism of the back, Gout and Neuralgia in all its forms;

such as neuralgia of the stomach and bowels, neuralgia of the kidneys, neuralgia of the womb and ovaries, sick headache, etc., etc. The peculiar power of this remedy to relieve the severest cases of inflammatory rheumatism in a few hours is very wonderful. It removes the cause from the system and the disease quickly disappears. Dr. Detchon's Relief for Rheumatism."

The indictment was based upon a report by the Secretary of the United States Department of Agriculture showing that from analyses by the Bureau of Chemistry of said Department of samples taken from each of the aforesaid shipments, they were misbranded. Said analyses showed the drug denominated "Dr. Detchon's Relief for Rheumatism" to be a liquid preparation consisting principally of sodium salicylate, sugar, and water, and the drug denominated "Dr. Detchon's Relief for Rheumatism Tablets" to consist principally of sodium salicylate. Misbranding was alleged against each article in separate counts for the reason that the ingredients of which each of said products was shown by the aforesaid analyses to consist were without the therapeutic or curative properties claimed for them in the statements made on the labels as aforesaid, and the said statements in regard to the curative properties of said drugs were, therefore, false and misleading.

On May 17, 1911, the defendant was arraigned upon the indictment and pleaded guilty thereto, whereupon the court imposed a fine of $200 with costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 25, 1911.*

1091

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F. & D. No. 1925.
I. S. No. 23245-b. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1092.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF MILK.

At the May term of the District Court of the United States for the District of Indiana, the grand jurors of the United States within and for said district, acting upon a report of the Secretary of Agriculture, returned an indictment against Henry Regel, in and of said district, charging shipment by him, in violation of the Food and Drugs Act, on June 15, 1910, from the State of Indiana into the State of Ohio, of a quantity of milk which was adulterated. Adulteration was charged in the indictment for the reason that the said milk consisted in part of a filthy, decomposed, and putrid animal substance.

On May 17, 1911, the defendant was arraigned upon the indictment and pleaded guilty thereto, whereupon the court fined him $25 and costs.

W. M. Hays,
Acting Secretary of Agriculture.

Washington, D. C., *August 26, 1911.*

8509°—No. 1092—11

F. & D. No. 2569.
I. S. No. 791–c. Issued September 30, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1093.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF DR. LINDLEY'S EPILEPSY REMEDY.

At the May term of the District Court of the United States for the District of Indiana the grand jurors of the United States within and for said district returned an indictment against A. K. Hollowell, alias New Vienna Medicine Co., of said district, charging shipment by him, in violation of the Food and Drugs Act, on October 22, 1910, from the State of Indiana into the State of Ohio of a certain drug denominated "Dr. Lindley's Epilepsy Remedy" which was misbranded. The package containing said article was labeled as follows: "Dr. Lindley's Epilepsy Remedy. A Positive Remedy for Epilepsy, Fits, Spasms, Convulsions and St. Vitus Dance. * * * New Vienna Medicine Co., Indianapolis, Denver. Epilepsy. * * * For this disease we have a specific to offer which * * * produces perfect cures. We have never seen a case of Epilepsy, whether recent or of long standing, whether the attacks were light or assumed the form of terrible fits or convulsions, occurring once a month or twenty times a day, that Dr. Lindley's Fit Cure, in its present perfect form will not arrest at once. * * * by persistent use of the remedy perfect cures are effected in a large majority of cases. * * * the medicines may be taken as long as required without any fear of harm; * * * if the dose named does not stop at once the attacks and give perfect relief, you should increase the amount until the effect is produced, regardless of the quantity required, and this, we assure you, you can do without any danger whatever from the medicine. * * * Be thorough, be persistent, and you will not be disappointed in the results. * * * In ninety cases out of a hundred the Fit Cure meets all requirements and effects a cure without special treatment."

Analysis by the Bureau of Chemistry of a sample of said article showed it to be a hydro-alcoholic solution of bromides of potassium, sodium, and ammonium, flavored with a volatile oil. The indictment was prepared upon a report of the Secretary of the United States Department of Agriculture, and alleged misbranding of the article in two counts: First, for the reason that the statement "Positive remedy for epilepsy, fits, spasms, convulsions and St. Vitus Dance" appearing on the aforesaid label was false and misleading, because the drug does not contain ingredients the remedial action of which will be certain and positive in the cases stated; and second, because the aforesaid label on said article failed to bear a statement indicating the quantity or proportion of alcohol contained in the said article.

On May 17, 1911, the defendant pleaded guilty to said indictment and was fined $200 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 26, 1911.*

1093

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F. & D. No. 2509.
I. S. No. 1359–b.

Issued October 18, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1094.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF HAMMOND DAIRY FEED.

At the May term of the District Court of the United States for the District of Indiana the grand jurors of the United States within and for said district returned an indictment against the Western Grain Products Co., a corporation within said district, charging shipment by it, in violation of the Food and Drugs Act, on March 25, 1910, from the State of Indiana into the State of Pennsylvania of a quantity of Hammond Dairy Feed, which was adulterated and misbranded. The product was labeled as follows: "Season 09–10. 100 lbs. 17% protein; 3% fat; 56% carbohydrates. Guaranteed. Ha ıond Dairy Feed. W. G. P. Co. Manufactured by Western Grain Products Co. Hammond, Ind." "100 pounds. The Western Hammond Dairy Feed to contain not less than 3.0% of fat, not less than 17.0% protein, not over 9.0% of fiber, not over 3/10 of 1 per cent salt; and to be compounded from the following ingredients: cotton seed meal, distillers grains, malt sprouts, mixed broken grains, corn, wheat, oats, barley and pure cane molasses".

Analysis of a sample of this product made by the Bureau of Chemistry of the United States Department of Agriculture showed it to contain moisture 9.60 per cent, ether extract 5.15 per cent, protein 13.41 per cent, crude fiber 13.16 per cent, while the microscopic examination made by the same Bureau showed the product to contain cottonseed meal, oats, corn, malt sprouts, wheat, barley, distillers grains, and approximately 25 per cent weed seeds. The indictment was based upon a report by the Secretary of the United States Department of Agriculture, and alleged misbranding of the product for the reason that the statement on the label that it contained 17 per cent protein and 9 per cent crude fiber was false and misleading

since said product did not contain said percentages, but a less percentage of protein, to wit, 13.41 per cent, and a greater percentage of crude fiber, to wit, 13.16 per cent. Adulteration was alleged for the reason that a substance, to wit, weed seeds, had been mixed and packed with the product so as to injuriously affect its quality and strength.

On May 17, 1911, the defendant corporation pleaded guilty to the indictment and was fined $200 and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 28, 1911.*

1094

F. & D. No. 1534.
I. S. No. 10903–b. Issued October 18, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1095.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF TOMATO CATSUP.

On August 16, 1910, the United States Attorney for the Northern District of Ohio, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Leroux Cider & Vinegar Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act, on or about September 13, 1909, from the State of Ohio into the State of Illinois of a quantity of tomato catsup which was adulterated and misbranded.

Examination of a sample of this product, made by the Bureau of Chemistry, United States Department of Agriculture, showed it to contain yeasts 25 per one-sixtieth cmm., bacteria estimated at about 35,000,000 per cc., and mold filaments and tissues, indicating the presence of decayed fruit. Adulteration was alleged for the reason that said product contained filthy, decomposed, or putrid vegetable substances. Misbranding was alleged for the reason that the label of said product was false and misleading in that it represented that the product was made from red ripe tomatoes, pure spices, onions, and granulated sugar, when, in fact, it consisted in part of a filthy, decomposed, or putrid vegetable substance.

On September 26, 1910, the defendant pleaded nolo contendere, and the court imposed a fine of $25 on each count, amounting in all to $50, and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 28, 1911.*

8786°—No. 1095—11

F. & D. No. 1824.
I. S. No. 18719–b.
Issued October 18, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1096.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF FLAVORING EXTRACT.

On January 31, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against Edward Weston Tea & Spice Co., a corporation, St. Louis, Mo., alleging shipment by it, in violation of the Food and Drugs Act, on or about April 11, 1910, from the State of Missouri into the Territory of New Mexico of a flavoring extract which was adulterated and misbranded. The product was labeled: "Choice Vanillin Solution 74 per cent; Vanilla Extract 25 per cent; Caramel 1 per cent. Serial No. 15747. For cakes, ices, ice cream, pastry, etc. Put up for L. B. Putney, Albuquerque, N. M."

Analysis of the product by the Bureau of Chemistry, United States Department of Agriculture, showed it to be a liquid preparation consisting of alcohol 18.20 per cent, solids 16.10 per cent, vanillin 0.240 per cent, and a trace of resin and caramel. The information, therefore, alleged adulteration of the product in that the vanilla extract content was less than 25 per cent, and this reduced and lowered and injuriously affected the quality and strength of the article; and further, in that the article was mixed with, and colored by, a certain coloring matter called caramel in such a manner that the inferiority of the article was concealed. Misbranding was alleged in the information in that the statement on the label "Vanilla Extract 25 per cent" was false and misleading and calculated to deceive the purchaser, because the analysis showed the product to contain less than 25 per cent of that ingredient.

On June 1, 1911, the defendant pleaded guilty and was fined $25 on each count, totaling $50, and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 28, 1911.*

8786°—No. 1096—11

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F. & D. No. 1777.
I. S. No. 14923-b. Issued October 18, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1097.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF BLACKBERRY JAM.

On January 31, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the National Pickle & Canning Co. (Dodson-Braun Branch), a corporation, St. Louis, Mo., alleging shipment by it, in violation of the Food and Drugs Act, on or about November 12, 1909, from the State of Missouri into the State of Texas, of a quantity of jam which was adulterated and misbranded. The product was labeled: "Holly Brand Blackberry Jam Compound—Ingredients: Fresh Blackberries, Apple Juice, Glucose, Phosphoric Acid and Cane Sugar. Preserved with Sodium Benzoate. National Pickle & Canning Co. St. Louis, Dodson-Braun Branch, Mo., Extra Quality. Guaranteed under the Food and Drugs Act, June 30, 1906."

Analysis of the product by the Bureau of Chemistry of this Department showed the presence of yeasts and spores in the proportion of 76 to one-sixtieth cmm., with about 50,000,000 bacteria per cc., and a few molds. The information therefore alleged adulteration of the product in that it consisted in part of a filthy, decomposed, and putrid substance. Misbranding was alleged in the information in that the product was, by its label, represented to be composed of fresh blackberries, apple juice, glucose, phosphoric acid, and cane sugar, preserved with sodium benzoate, when in fact the article consisted in part of yeasts, spores, bacteria, and molds, and filthy, decomposed, and putrid animal and vegetable substances, and the statements on the label as to the ingredients of the product were, therefore, false and misleading and calculated to deceive the purchaser.

On May 29, 1911, the defendant pleaded guilty and was fined $10 on each count, totaling a fine of $20, and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 28, 1911.*

8786°—No. 1097—11

F. & D. No. 1902.
I. S. No. 15275–b.
Issued October 18, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1098.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION AND MISBRANDING OF CATSUP.

At the November term of court, 1910, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the National Pickle and Canning Co. (Dodson-Braun Branch), a corporation, of St. Louis, Mo., alleging shipment by it, in violation of the Food and Drugs Act, on or about March 15, 1910, from the State of Missouri into the State of Arkansas, of a quantity of catsup which was adulterated and misbranded. The product was labeled: "Premium Brand Tomato Catsup. Put up by the National Pickle & Canning Co., Dodson-Braun Branch, St. Louis, U. S. A. Containing 1/10 of 1% Sodium Benzoate (Guaranty Legend)"; (on sticker): "This catsup is prepared from carefully selected whole, red-ripe tomatoes with pure vinegar, salt and carefully selected spices, and is guaranteed to be absolutely pure and free from artificial coloring matter."

Analysis of the product by the Bureau of Chemistry of this Department showed it to contain among other things 0.24 per cent sodium benzoate, and a bacteriological examination by said Bureau showed the presence of numerous yeasts and spores, bacteria estimated at 70,000,000 per cc., with mold filaments in about four-fifths of the microscopic fields, and an abundance of bacterial débris. The information, therefore, alleged adulteration of the product in the first count because it consisted in a large part of a filthy, decomposed, and putrid animal or vegetable substance. Misbranding was alleged in the information in the second count because the statements on the

label, "This catsup is prepared from carefully selected whole red-ripe tomatoes with pure vinegar, salt and carefully selected spices, and is guaranteed to be absolutely pure and free from artificial coloring matter," are false and misleading, and calculated to mislead and deceive the purchaser in that said product was not what said label represented it to be, but on the contrary contained a large amount of yeasts and spores, mold filaments, bacteria, bacterial débris, filthy, decomposed, and putrid animal and vegetable substances. Misbranding was further alleged in the third count of the information for the reason that the label on the product represented it to contain only one-tenth of 1 per cent of sodium benzoate, when, in fact, it contained 0.24 per cent sodium benzoate.

On May 29, 1911, the defendant pleaded guilty and was fined $10 on each count, totaling a fine of $30, and costs.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *August 29, 1911.*

1098

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F. & D. No. 1359.
I. S. No. 5925–b. Issued October 18, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1099.

(Given pursuant to section 4 of the Food and Drugs Act.)

MISBRANDING OF FLAVORING EXTRACT.

At the May term of court, 1910, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the St. Louis Coffee & Spice Mills, a corporation, of St. Louis, Mo., alleging shipment by it, in violation of the Food and Drugs Act, on or about November 8, 1909, from the State of Missouri into the State of Kansas of a quantity of a flavoring extract which was misbranded. The product was labeled: "Nectar Brand Purity Strength Flavor. Vanilla, Vanillin, Coumarin, Sugar Color St. Louis Coffee & Spice Mills, St. Louis, Mo."

Analysis by the Bureau of Chemistry of this Department showed the product to contain no extract derived from the vanilla bean in any appreciable quantity, but that it was a highly dilute alcoholic solution of vanillin and coumarin, containing also sugar and caramel. Misbranding was alleged in the information in that the use of the word "Vanilla" upon the label of the product was false and misleading and calculated to deceive the purchaser into the belief that the article contained an extract derived from the vanilla bean; and further, in that the article was an imitation of and was offered for sale under the distinctive name of a product containing among other ingredients extract of vanilla.

On May 2, 1911, the defendant pleaded nolo contendere and was fined $5 and costs.

W. M. Hays,
Acting Secretary of Agriculture.

Washington, D. C., *August 29, 1911.*

8787°—No. 1099—11

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F. & D. No. 1719.
I. S. No. 4870-b. Issued October 22, 1911.

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1100.

(Given pursuant to section 4 of the Food and Drugs Act.)

ADULTERATION OF CRYSTAL EGG.

On January 31, 1911, the United States Attorney for the Eastern District of Missouri, acting upon the report by the Secretary of Agriculture, filed information in the District Court of the United States against the St. Louis Crystals Egg Co., a corporation, of St. Louis, Mo., alleging shipment by it, in violation of the Food and Drugs Act, on or about April 23, 1910, from the State of Missouri into the State of Massachusetts of a quantity of a food product called "Crystal Egg" which was adulterated.

Microscopical examination of the product by the Bureau of Chemistry of this Department showed it to be very poor in appearance with a very offensive odor, and to contain eggshells and dirt. Bacteriological examination of the product by the Bureau of Chemistry of this Department disclosed the presence of an excessive number of organisms, including the streptococci and bacteria of the B. coli group. The information therefore alleged adulteration of the product in that, in its manufacture, there had been mixed and packed with it dirt and eggshells, so as to injuriously affect its quality, and in that the product consisted in part of a filthy, decomposed, and putrid animal substance.

On June 5, 1911, the defendant pleaded guilty and was fined $10 and costs.

W. M. Hays,
Acting Secretary of Agriculture.

Washington, D. C., *August 29, 1911.*

9995°—No. 1100—11

INDEX TO NOTICES OF JUDGMENT 1001 TO 1100.[1]

Arranged under heads: Foods (p. 2); Beverages, including waters and medicated soft drinks (p. 3); Drugs (p. 4).]

FOODS.

[1] For index of Notices of Judgment 1–1000, see Notice of Judgment 1000; future indexes to be supplementary thereto.

FOODS—Continued.

BEVERAGES, INCLUDING WATERS AND MEDICATED SOFT DRINKS.

BEVERAGES, INCLUDING WATERS AND MEDICATED SOFT DRINKS—Continued.

DRUGS.